

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

1	FTX TRADING LTD., MACLAURIN INVESTMENTS LTD., f/k/a/ ALAMEDA VENTURES LTD., and WEST REALM SHIRES SERVICES, INC.,	Adversary Proceeding No. 23-50492 (JTD)
3	Plaintiffs,	.
4	-against-	.
5	LAYERZERO LABS LTD., ARI LITAN, and SKIP & GOOSE LLC,	.
7	Defendants.	.
8	• • • • • • • • • • • • • • •	.
9	ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES INC., (d/b/a FTX.US),	Adversary Proceeding No. 23-50584 (JTD)
12	Plaintiffs,	.
13	v.	.
14	ALLAN JOSEPH BANKMAN and BARBARA FRIED,	.
15	Defendants.	.
16	• • • • • • • • • • • • • • •	.
17	FTX TRADING LTD. and WEST REALM SHIRES SERVICES, INC.,	Adversary Proceeding No. 23-50585 (JTD)
19	Plaintiffs,	.
20	-against-	.
21	MICHAEL BURGESS, HUY XUAN "KEVIN" NGUYEN, JING-YU "DARREN" WONG, MATTHEW BURGESS, LESLEY BURGESS, 3TWELVE VENTURES LTD., and BDK CONSULTING LTD.,	.
24	Defendants.	.
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(CONTINUED)

1 FTX TRADING LTD., and MACLAURIN . Adversary Proceeding
2 INVESTMENTS, LTD., . No. 23-50437 (JTD)
3 Plaintiffs, .
4 -against- .
5 LOREM IPSUM UG, PATRICK GRUHN, .
6 ROBIN MATZKE, and BRANDON . Courtroom No. 5
7 WILLIAMS, . 824 Market Street
8 . Wilmington, Delaware 19801
9 Defendants. .
10 November 15, 2023
11 1:05 p.m.
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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

11 For the Debtors and
12 Debtors-in-Possession: Adam G. Landis, Esquire
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20 . Brian D. Glueckstein, Esquire
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1 APPEARANCES (CONTINUED) :

2 For the US Trustee: Benjamin A. Hackman, Esquire
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1 APPEARANCES (CONTINUED) :

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10 -and-

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19 Los Angeles, California 90067

20 James E. O'Neill, Esquire
21 919 North Market Street
22 17th Floor
23 Wilmington, Delaware 19899

24 ALSO APPEARING:

25 In Propria Persona: Patrick Rabbitte, Pro Per
26
27 Simon Carter, Pro Per

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13	7, filed on July 26, 2023]	
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17	Canadian Corporation, to Dismiss Complaint for	
18	Lack of Personal Jurisdiction Pursuant to Rule	
19	12(b)(2) [Alameda Research Ltd. et al. v.	
20	Platform Life Sciences Inc. et al., Adv. No.	
21	23-50444 (JTD) - Adv. D.I. 35, filed on	
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30	No. 23-50444 (JTD) - Adv. D.I. 37, filed on	
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1 (Proceedings commenced at 1:05 p.m.)

2 THE COURT: Good afternoon, everyone. Thank you.

3 Please be seated.

4 Before we begin, I just need to make sure that our
5 folks who are on the Zoom call -- I made this announcement --
6 I don't know if I did in this case before, it might have been
7 Mallinckrodt. The Judicial Council has instituted new rules
8 post-COVID for participation remotely in bankruptcy and other
9 Court proceedings. The rule is that if you are not a party
10 to the case, and in a bankruptcy case that would include
11 someone who is a customer, or creditor, or investor, parties
12 who are represented by counsel, you cannot appear and view
13 the video of the proceeding. You can only participate by
14 audio. And if there are witnesses then you have to be off
15 completely. If you want to see the witnesses testify you have
16 to be in Court.

17 So, with that announcement I know Jermaine made an
18 announcement earlier as well, if you are a member of the
19 press, and we have the login sheet, if you haven't dropped
20 off, we are going to move you into the waiting room for Zoom
21 and you can then dial-in without video to hear most of the
22 proceeding. When a witness testifies you are going to be
23 kicked back out again, and then we will bring you back in
24 after the witness is done. So, you can hear the arguments,
25 you can hear those things, but you can't hear the witnesses

1 testifying. Those aren't my rules. The Judicial Council set
2 those rules. So, I have to live with them.

3 So, that is where we are. Go ahead, Mr. Landis.

4 MR. LANDIS: Good afternoon, Your Honor. May I
5 please the Court, Adam Landis from Landis Rath & Cobb on
6 behalf of the FTX Trading Ltd., debtor and its affiliated
7 debtors.

8 Your Honor, we have a number of matters going
9 forward this morning:

10 One matter in the main case at Item No. 11, the
11 amended motion regarding the reimbursement agreement; two
12 matters in the Platform Life Sciences adversary; one matter
13 in the Lorem Ipsum adversary; and one status conference
14 requested by the United States Trustee regarding fee examiner
15 and the emergent debtors.

16 I will yield the podium to Mr. Glueckstein who
17 will handle Item No. 11 regarding the reimbursement
18 agreements.

19 THE COURT: Okay. Thank you.

20 Mr. Glueckstein.

21 MR. GLUECKSTEIN: Good afternoon, Your Honor. For
22 the record Brian Glueckstein, Sullivan & Cromwell, for the
23 debtors. Your Honor, I am here today with two of my
24 partners, Stephen Ehrenberg and Stephanie Wheeler, who will
25 be handling certain matters in the adversary proceedings.

1 Your Honor, this is -- Agenda Item No. 11 is the
2 debtor's motion seeking entry of an order authorizing the
3 debtors to enter into and perform under the reimbursement
4 agreements with the specified professionals of the Ad Hoc
5 Committee of Non-US Customers of FTX.com. Your Honor, we
6 were informed a short time ago, this morning, that the U.S.
7 Trustee is standing down on its objection to the motion. We,
8 of course, appreciate this development and are pleased to
9 have the U.S. Trustee drop this objection.

10 We were, however, surprised by its timing given
11 that specifically on Monday we did inquire with the U.S.
12 Trustee as to whether Mr. Ray needed to travel and appear
13 today at the hearing for potential cross-examination and we
14 were told he did. So, Mr. Ray is here in the courtroom this
15 afternoon and present.

16 The only remaining objection that we have to the
17 motion this afternoon is an objection that we have to the
18 motion this afternoon is an objection that was filed by an
19 individual creditor, Mr. Pat Rabbitte. I will address his
20 objection and the requested relief briefly.

21 First, Your Honor --

22 THE COURT: I think there was an additional one,
23 another pro se claimant has filed an objection that was just
24 filed yesterday I believe; Mr. Carter.

25 MR. GLUECKSTEIN: Okay. Mr. Carter had, if this

1 is the one, I'm thinking of, some broader issues as well, but
2 to the extent it looked as an objection to this, you know, I
3 don't think there are new issues here. But you can certainly
4 hear from the objectors.

5 In support of the motion, Your Honor, we did
6 submit the declaration of the debtor's chief executive
7 officer, Mr. Ray, that we filed at Docket No. 3700. As I
8 noted, Mr. Ray is here in the courtroom and available if the
9 Court has questions, but we would ask that Mr. Ray's
10 declaration be moved into evidence.

11 THE COURT: Is there any objection?

12 (No verbal response)

13 THE COURT: Hearing nothing, it's admitted without
14 objection.

15 (Ray declaration received into evidence)

16 MR. GLUECKSTEIN: Thank you, Your Honor.

17 Your Honor, the ad hoc committee, with members
18 currently holding well over \$1 billion, I believe it's in
19 excess of \$1.2 billion based on the updated 2019 that was
20 filed this morning, of FTX.com claims has been and continues
21 to be an important constituency whose active participation in
22 these cases has benefited the debtors and their estates.

23 The ad hoc committee was formed very early on in
24 these cases and has continued to both grow and evolve to be
25 representative of the vast and diverse group of FTX.com

1 customers. The ad hoc committee commenced, as Your Honor
2 knows and will recall, an adversary proceeding early on in
3 these cases asserting property interest in the debtor's
4 digital assets. The fair resolution of those claims has been
5 an important issue for the debtors to discuss and resolve as
6 part of this plan formation process.

7 The FTX.com creditors, who constitute the debtor's
8 largest class of creditors, are separately classified in our
9 proposed plan and will be entitled to vote in the amended
10 plan that will be filed shortly and brought forward before
11 Your Honor. The ad hoc committee, of course, is not an
12 estate fiduciary, but the debtors believe that it is
13 representative of the customers of FTX.com, including small
14 and large holders of claims and includes both initial holders
15 and subsequent claims purchasers.

16 While they will undoubtedly be FTX.com creditors
17 whose views differ from the consensus views expressed by the
18 ad hoc committee, the debtors believe that the ad hoc is well
19 situated to negotiate settlements of customer related issues
20 with the debtors on behalf of a critical mass of customers
21 who can support the relief that results.

22 The alternative, Your Honor, of negotiating
23 individually with every single of the millions of customers
24 is impractical. Thus, the debtors have determined, in their
25 business judgment, to agree to reimbursement of reasonable

1 fees and expenses of the ad hoc committee professionals as
2 set forth in the reimbursement agreements and the proposed
3 order that was filed with Your Honor. These agreements have
4 been extensively negotiated and considered before we brought
5 them here today for approval. The UCC has scrutinized these
6 agreements and has not, as they stated in their statement,
7 does not object to the relief that is being requested today.

8 Mr. Rabbitte's objection, as the now abandoned
9 U.S. Trustee objection, wrongly argues that the request that
10 is before the Court is governed by the substantial
11 contribution standard under Section 503(b) of the Bankruptcy
12 Code. Respectfully, Your Honor, we submit this is not the
13 law. As detailed in our papers there is clear and persuasive
14 body of recent case law, including a decision by Judge
15 Silverstein just last week, that draws a distinction between
16 a request by the debtor and a request by the creditor seeking
17 reimbursement and holding that Section 363 is a valid
18 statutory basis for the requested relief when being sought by
19 a debtor.

20 The District Court's opinion, affirming this Court
21 in Mallinckrodt, examined this exact issue, and arguments,
22 and correctly determined that Section 363 and 503 of the
23 Bankruptcy Code are directed at different parties, operate at
24 different times, and serve different purposes. Numerous
25 other Courts have examined this exact issue and agreed,

1 including Courts in this district in recent decisions of
2 Kidde-Fenwal and Amyris, Section 363 is the appropriate legal
3 standard and the uncontroverted evidence that the debtor has
4 submitted demonstrates the debtors have exercised their
5 reasonable business judgment in agreeing to the terms of the
6 reimbursement agreements with the ad hoc committee.

7 As Mr. Ray's testimony, now uncontroverted,
8 explains the debtors have received substantial benefits from
9 the ad hoc committee's support and cooperation to date and
10 that cooperation and constructive participation in these
11 cases is important as the plan process moves forward.
12 Mr. Ray's testimony also explains, in the debtor's view,
13 there could at some point on certain issues be divergence of
14 interest between the FTX.com customers and general unsecured
15 creditors whose collective interests are represented by the
16 UCC.

17 In fact, the ad hoc committee and the UCC do
18 represent and serve distinct roles. The committee represents
19 the collective interest of all unsecured creditors of FTX.com
20 and otherwise. The ad hoc committee, of course, represents
21 not only the FTX.com creditors that does so with respect to
22 all claims including their assertions that those customers
23 hold property interests in the debtor's assets. Therefore,
24 the debtors view the ad hoc committee as an important
25 counterpoint to the UCC on a number of issues and we believe

1 separate representation is appropriate.

2 Critically, Mr. Ray explains in his declaration
3 that the benefits of the ad hoc committee's active
4 participation to date, including the negotiation and entry
5 into a plan support agreement on October 16th. That plan
6 support agreement, which is also supported by the official
7 committee, was reached following constructive and lengthy
8 negotiations with the ad hoc committee and its professionals.

9 The PSA creates a binding obligation on the ad hoc
10 committee to settle the customer property adversary
11 proceeding and other key disputes with the debtors and to
12 support the debtors plan process pursuant to the terms
13 contained therein. Insuring that agreement stays in place is
14 an important consideration as Mr. Ray explains in his
15 declaration.

16 Furthermore, Your Honor, the debtors negotiated
17 the terms of the reimbursement agreement at arm's length and
18 successfully included numerous safeguards. Among them,
19 insuring that the work that is eligible for reimbursement is
20 benefiting the estates as a whole, that there are appropriate
21 caps on fees that were carefully and subject of lengthy
22 negotiations, and, of course, that the debtors retain a right
23 to terminate that arrangement at any time if that is in the
24 best interest of the debtor's estate.

25 Additionally, Your Honor, there will be ample

1 opportunity, and we believe very importantly, we negotiated
2 there to be additional safeguards so that both the Court and
3 all parties in interest have the opportunity to evaluate
4 whether the actual fees being sought are reasonable and
5 benefit the estate because the professionals are subject to
6 the Court's interim compensation procedures and review by the
7 fee examiner with respect to all fees that are submitted for
8 reimbursement.

9 The evidence before the Court, Your Honor,
10 conclusively establishes that the debtors, through Mr. Ray,
11 and the debtor's board of directors determined in its
12 business judgment that reimbursement of the ad hoc committee
13 professionals is in the best interest of the debtors and
14 their estates. We submit, Your Honor, the debtors have
15 carried their burden, based on that business through
16 Mr. Ray's testimony, to satisfy Section 363(b) of the
17 Bankruptcy Code and we request that the revised order that we
18 submitted this morning, which makes a few technical changes
19 that had been part of the U.S. Trustee's objection filed at
20 Docket No. 3796, be entered.

21 THE COURT: Let me ask you some questions because
22 I am struggling with how the ad hoc committee -- in their own
23 papers they say what we did was we sued the debtors, we
24 negotiated with the debtors, we settled that lawsuit through
25 our plan support agreement which includes providing that our

1 clients and other similarly situated parties have a separate
2 class and receive priority payment over other general
3 unsecured creditors. That sounds to me like they were acting
4 in their own self-interest and maybe it had an incidental
5 benefit to the estate, but they certainly weren't acting for
6 the benefit of the estate in that context.

7 I made it clear in Mallinckrodt, and Judge Stark
8 agreed with me in his opinion upholding my decision, that in
9 this context the business judgment rule, it's not just the
10 debtor's business judgment, but it also has to be something
11 that -- it has to be engaged in something that is beneficial
12 to the estate, more akin to a 503 standard. And under 503
13 it's, obviously, clear that it cannot be just simply
14 incidental. I am afraid we are opening a pandora's box here
15 that anytime a creditor says, hey, I got a \$100 million claim
16 against the debtor, I have now settled it for \$50 million
17 after months of negotiations with the debtor, that opened up
18 \$50 million of additional funds for other creditors so,
19 therefore, you should pay my fees. Why should I do that?

20 MR. GLUECKSTEIN: Your Honor, I understand the
21 concern and I don't think that is what is happening here. I
22 do think the facts here are unique and under no circumstances
23 are we suggesting they should be par for the course or
24 ordinary course approval of fees. What we have here is a
25 situation where we have a class of creditors that numbers in

1 excess of, at least, a million that are creditors of FTX.com.
2 The lawsuit that was filed by the ad hoc group, by the ad hoc
3 committee, seeking property interest claims is an issue that
4 needs to be resolved. We have discussed it before Your
5 Honor. Your Honor has raised question about these questions,
6 and they need to be resolved. And we need to have somebody
7 to talk to, to resolve those issues and related issues.

8 There are a significant number of issues here
9 affecting the FTX.com creditors that are central to our plan,
10 how we deal with preferences, how distributions are going to
11 be made. There is an ongoing process, as Your Honor knows,
12 to deal with the FTX.com exchange. What eligibility are
13 customers going to have should there be a successful
14 transaction to take distributions in alternative manners.

15 These are questions where the debtor and their
16 estates, in order to come forward with a plan that is both
17 actionable and that begins to build consensus needs to have a
18 critical mass of those creditors at the negotiating table.
19 It's simply not realistic to suggest that we are going to be
20 able to negotiate, in the first instance, a plan of
21 reorganization with such a disparate group of a million plus
22 creditors.

23 THE COURT: The ad hoc committee only represents
24 38 creditors. They can't act on behalf of the other nine
25 million.

1 MR. GLUECKSTEIN: They can't act on behalf of
2 them, that is true. And as I stated earlier, they are not
3 certainly acting in a capacity as a fiduciary for those, but
4 we do believe that they are representative and that --

5 THE COURT: And you are going to present your
6 plan, and seek to have it approved, and any one of those or
7 any multiple number of those nine million customers might
8 come forward and object. So, how does dealing with just the
9 ad hoc committee resolve that issue?

10 MR. GLUECKSTEIN: Well, it does two things.
11 First, we are resolving the litigation and I understand that
12 simply resolving the litigation is not enough for
13 reimbursement. We wouldn't be proposing that, but that is an
14 important milestone in the case to have that litigation
15 resolved. There is two adversary proceedings filed on this
16 issue through our plan support agreement; both of now have
17 been resolved on this issue.

18 The issues that flow out of that, in terms of plan
19 formation, to know that there is a critical mass of customers
20 holding a significant value in claims, in excess of \$1.2
21 billion that has been subject to NDA, that has been at the
22 negotiating table, that has looked at the issues, has had
23 arm's length negotiations with the debtor, with the
24 creditor's committee, and has looked at all of the different
25 permutations that we have been contemplating before we bring

1 a plan forward is helping to build critical consensus that we
2 need for this plan.

3 We think that is, and Mr. Ray's testimony in his
4 declaration goes to this point, providing collective value to
5 the estate on the unique facts of this case, which is that we
6 have such a large, both in terms of number, in terms of
7 volume of claims, value of claims, and just numerosity number
8 of claimants.

9 You are absolutely right, Your Honor, we will put
10 our plan forward, it will go out for solicitation, it will be
11 voted on and undoubtedly there are going to be creditors who
12 have a differing view. But we do believe that the efforts
13 that have been made by the ad hoc committee to work with the
14 debtors, to work with the committee, to build consensus is
15 shortening the timeline on this case and it is helping to get
16 towards what we hope, ultimately, is a consensual plan.

17 THE COURT: Let me ask you another question, it's
18 not necessarily related to this motion -- no, it is related,
19 but not only this motion. The ad hoc committee says in their
20 papers there is an actual conflict of interest with the UCC
21 because the UCC cannot act for the benefit of these customers
22 are different from other general unsecured creditors because
23 they are arguing that the property is actually theirs and
24 should have been returned. That was the basis of their
25 lawsuit and they have now settled that, obviously, through

1 this plan support agreement.

2 Is there a conflict with the UCC? How do I deal
3 with that? And maybe this isn't a fair question for you, but
4 why didn't they move for appointment of a separate committee?

5 MR. GLUECKSTEIN: Well, I think --

6 THE COURT: We wouldn't have this problem.

7 MR. GLUECKSTEIN: -- Your Honor, you know, we
8 haven't used the word "conflict" in that way. Obviously,
9 conflict has a very specific meaning, but I think, as I
10 touched on earlier and as we explain in our papers, from the
11 debtor's perspective if the claims that have -- the
12 committee, the official committee represents the interests,
13 collectively, of unsecured creditors. By definition they
14 need to be unsecured creditors.

15 The rights that have been asserted in the
16 adversary proceeding by the members of the ad hoc committee
17 are that they are not unsecured creditors that they are, in
18 fact -- that the debtor is holding their property, that they
19 want a return of their property. So, by definition if they
20 are, in fact, property owners and those claims when
21 ultimately litigated were to prevail they wouldn't be
22 creditors in this case, they would be some mechanism to
23 return property. There are all kinds of issues here of why
24 that doesn't work in terms of whether we have the property
25 and how that all works, but there are equitable trusts and

1 other arguments that we talked about.

2 So, I think the argument, as I say, we don't
3 view -- I don't view it as a conflict, I just view it as
4 they're representing different interests and to the extent
5 that the ad hoc committee is bringing forward and pressing
6 their interest as property holders, and that is the dynamic
7 that we faced in the negotiation of coming up with the
8 structure for the plan where the committee is representing
9 the interests very well of all unsecured creditors of not
10 only FTX.com, but of the other debtors.

11 We have the ad hoc members saying but we believe
12 we have these property interests and that would take us
13 outside the purview and the scope of the committee's mandate
14 by statute. So, I don't view it as a conflict as much as
15 that there are differing interests in play in putting this
16 complex puzzle together.

17 THE COURT: Okay. Anything else?

18 MR. GLUECKSTEIN: Nothing else unless the Court
19 has any other questions.

20 THE COURT: Let me hear from the parties who
21 support the plan.

22 MR. HARVEY: Good afternoon, Your Honor. May I
23 please the Court, Matthew Harvey from Morris Nichols Arsh &
24 Tunnell on behalf of the ad hoc committee.

25 Your Honor, I won't repeat anything from the

1 debtor's well-articulated arguments in support of their
2 motion. As set forth in our filed reply, because the
3 objections we think regrettably were founded on
4 misconceptions about the ad hoc committee's composition and
5 purpose, and the crucial roles that we think we played in
6 this case, we would like an opportunity to just briefly
7 address those points.

8 The first point, Your Honor, that I would address
9 is that as set forth in our reply filed on Sunday and in our
10 third supplemental 2019 statement filed this morning, and I
11 will note from that, Your Honor, the group membership is now
12 actually 66 members, 58 of which are original holders, the ad
13 hoc group represents a diverse group of FTX.com customers
14 spanning over 31 countries globally. Our purpose, as
15 outlined in our bylaws, and this is a quote, is to: "In a
16 cost efficient and timely manner maximize recoveries on
17 claims against FTX Trading Ltd., and its affiliated debtors
18 by leveraging the position that the debtors have no equitable
19 interest in the customer assets". The very next line is:
20 "Membership is open to all creditors aligned with this
21 purpose". So, that is number one on the, sort of,
22 composition and purpose.

23 Number two is on the early contributions and
24 recognition in this case. Your Honor, we were actually
25 formed 13 days before the U.S. Trustee appointed an official

1 committee. And to address a point Your Honor raised we did
2 actually seek a separate customer only committee from the
3 U.S. Trustee's office which they did not elect to appoint.
4 From there we went on with our role as the ad hoc committee.
5 We --

6 THE COURT: Well, you could have filed a motion
7 asking to appoint a committee.

8 MR. HARVEY: We could have, of course, filed a
9 motion, Your Honor, but we determined at the time that
10 proceeding to an ad hoc committee, including being able to
11 bring the litigation promptly before engaging in motion
12 practice over that, was the more prudent course at that time.

13 Regardless of whether we were an ad hoc committee
14 or official committee, we set out immediately to try to
15 address this dire situation that FTX customers found
16 themselves in suddenly in early November 2022. We put forth,
17 we think, what were the strongest arguments in favor of
18 FTX.com customers and their property rights. And despite
19 initial challenges and skepticism from others in the case our
20 customer property rights laid the foundation -- our customer
21 property rights arguments laid the foundation for what became
22 the original draft plan filed over the summer and eventually
23 through further in-person and other negotiations in September
24 and October which are extensive and contentious the
25 settlement plan support agreement and the plan term sheet

1 that the debtors filed in mid-October.

2 We think that we have contributed substantial
3 value to this case. Contrary to the objections, this value is
4 undeniably demonstrated. Our efforts have conserved estate
5 resources, advanced the cases, achieved favorable outcomes
6 under the PSA and the plan term sheet, and we believe we have
7 played a pivotal role in breaking deadlocks and negotiations
8 between other parties in the case including the debtors and
9 the committee.

10 This goes, I think, part to the point Your Honor
11 was raising about benefit to the estate versus benefit to the
12 constituent. In all of these cases where we have these ad
13 hoc committees, and I will elide to the government ad hoc
14 committee in the Mallinckrodt case, they, of course, have
15 their own parochial interests. And I think what Your Honor
16 recognized, of course you know your ruling better than I do,
17 was that they were putting aside those interests and their
18 parochial pursuit of just those interests. Many of those
19 government entities had pending litigation or investigations
20 against Mallinckrodt before the bankruptcy for their role in
21 the opioid crisis. Some of those were stayed, some probably
22 were not stayed as a result of the police power exceptions,
23 but they held those in abeyance just as we have done with our
24 litigation and they went to the mediation in front of Judge
25 Sontchi in that case, and they worked out what was ultimately

1 a global --

2 THE COURT: Mr. Feinberg was the --

3 MR. HARVEY: Mr. Feinberg, yeah, that's right.

4 Mr. Feinberg was, I believe, for that one and Judge Sontchi
5 was the one that my client in that case participated in with
6 the official committee.

7 To address another point, Your Honor, there were
8 dissidents after that. My client in that case was one of
9 them from the settlement that was reached, but the fact that
10 there may be dissidence to a deal that is broadly supported
11 by the key constituencies in their representatives I don't
12 think is an impediment to this type of motion.

13 We recognize in a case of this size you are likely
14 to never achieve, especially a case like this which is a free
15 fall bankruptcy without the ability to preplan and come up
16 with a structured support agreement ahead of time and lock-in
17 votes through a prepetition restructuring support agreements
18 you are going to have contention, there is over a million
19 FTX.com customers. There will be people that come out of the
20 woodwork, I'm sure of it.

21 What we are committed to as an ad hoc committee is
22 trying to bring as many of those people into the fold to
23 explain to them because all of the viewpoints that others are
24 expressing we have on our committee and we have considered
25 those. We have synthesized those into our views recognizing

1 the limitations of the bankruptcy law, the law, and the
2 facts, and the strictures of the way a plan needs to get
3 done, and the requirement for equal treatment among similarly
4 situated people to try to find a way that maximizes value,
5 respects as many of those interests as possible and doesn't
6 mire these estates in litigation.

7 It would be costly to everybody whether you are an
8 unsecured creditor, a secured creditor, customer of FTX.com,
9 customer of FTX US, whoever you are in the case litigation
10 that is long and drawn out and will not benefit anybody. We
11 won't be able to avoid all litigation in this case. There
12 might be creditors that on a one-off basis object, but we
13 believe we have already substantially narrowed it and we will
14 be able to continue to substantially narrow it.

15 I will address another point, Your Honor, that our
16 membership has been open to everybody. We have never denied
17 anybody membership. When we have heard people that didn't
18 want to join the membership it was earlier on in the case. It
19 was for, you know, the free-rider problem that they didn't
20 want to have to spend their own resources. Many of these
21 people are very small holders.

22 Actually, I think the morality of our holders are
23 very small holders. Many did join anyway, but they didn't
24 want to expend their resources while others who get the
25 benefit of the very favorable deal we cut here or had we

1 litigated to completion the result that we would have hoped
2 would have been favorable without expending any of the
3 resources of their own. So, you had a free rider problem.

4 The other problem you had was both before and
5 after your Court's ruling on the 2019 statement and sealing
6 which, of course, we respect. There were people that were,
7 you know, nervous about disclosing their identities because
8 of the jurisdictions in which they laid in for other reasons.
9 So, we have never been a closed group. We invite people,
10 it's actually in our 2019 statement, to contact us.

11 Ms. Broderick, my co-counsel, is on the phone and
12 is closer to some of these issues. She can address them on
13 specifics. I think we talked to nearly 300 customers. Our
14 group is now up to 66 members; 58 of them are original
15 holders, eight of them are secondaries.

16 On the point about -- Your Honor didn't have
17 questions on this, so I'm happy to not go into and waste any
18 time. Your Honor ruled this in Mallinckrodt, there is no
19 meaningful distinction between a primary and a secondary in
20 terms of their rights *vis-à-vis* the debtor and under the
21 plan. So, we think that is a false distinction, but it's
22 also just untrue what has been raised in some of the
23 commentary out there that this is a committee that is
24 nominated by secondary holders is not the fact.

25 THE COURT: Well, what exactly are you going to

1 seek reimbursement for? Are you going back to everything
2 you've done since the committee was formed?

3 MR. HARVEY: We are not. In fact, Your Honor,
4 this covers only from May 1 forward, which is the point at
5 which the -- plus or minus, when we stayed the litigation and
6 sort of got under the tent with the debtors, signed up NDAs,
7 began negotiating with the debtors, really we're able to
8 bring to bear the varying viewpoints of our members, large
9 and small, primary and secondary, people with preference
10 exposure, people without preference exposure, get access to
11 information, have negotiations with the creditors committee,
12 have negotiations with the debtors, evaluate their proposals,
13 advocate for our proposals.

14 So this is, I believe, consistent with what Your
15 Honor observed in Mallinckrodt, you were uncomfortable having
16 the fee reimbursement continue if things fell apart and
17 people started litigating or they weren't negotiating in good
18 faith. That's not to say that at some point we reserve the
19 right for the fees prior to, I think it's April, if at the
20 appropriate time to seek whether a substantial contribution
21 otherwise, but that's not before the Court today. What's
22 before the Court today is, starting May 1 forward, which is
23 when our engagement with the debtors under NDAs and
24 negotiations formally began.

25 THE COURT: Okay.

1 MR. HARVEY: So I don't have anything else
2 further. I only see -- I want to see if I have anything to
3 address here, any of Your Honor's questions that I don't
4 believe that -- I believe the debtors' counsel covered that.

5 THE COURT: The conflict.

6 MR. HARVEY: The conflict with the committee.
7 Conflict might be the imperfect word for this, Judge. I
8 think it's more of a square peg in a round hole for the
9 committee. The committee has a very important role to
10 fulfill in any case, in this case in particular, where
11 there's a diverse group of unsecured creditors, just like our
12 group has diversity within the group and there's diversity
13 within the constituency, it's a diversity with the unsecured
14 creditors. My personal view with this is that it would be
15 odd indeed for an official committee to file a lawsuit the
16 way we did and say that significant assets that someone else
17 may argue are in the estate are in fact out of the estate and
18 unavailable to unsecured creditors, and are available only to
19 a subset, although the largest subset of the constituents in
20 this case, the ftx.com customers. And then to try to
21 litigate something like that to completion or even in
22 negotiations to push the position that this property is
23 property of those customers to the exclusion of others who we
24 call general unsecured creditors in the case.

25 So I don't know that conflict is the right word,

1 they're just maybe not the appropriate party to advance what
2 we've done in this case.

3 THE COURT: Okay.

4 MR. HARVEY: Does Your Honor have any further
5 questions for me?

6 THE COURT: No, nothing. Thank you.

7 MR. HARVEY: Thank you, Your Honor.

8 MR. PASQUALE: Good afternoon, Your Honor, Ken
9 Pasquale from Paul Hastings for the official creditors
10 committee.

11 Your Honor, for the most part, I have nothing to
12 add to the statement that we filed on behalf of the official
13 committee. We have no objection to the ad hoc counsel fees
14 or to the Rothschild monthly fees, and reserve all our rights
15 on the Rothschild transaction fee, but I do want to address
16 the question that Your Honor answered with respect to
17 conflict. We certainly do not, in our view, have any
18 conflict.

19 The committee can negotiate and in fact has
20 negotiated with the ad hoc committee, with the debtors, with
21 the other class representative the plan support agreement,
22 which we think is a significant development in the case, but
23 all of the positions can, should be, and have been evaluated
24 and addressed in a real way by our committee. There's no
25 conflict. The committee, of course, has a fiduciary duty to

1 represent all of the creditors, and our committee has taken
2 that responsibility extremely seriously and considered the
3 number, the amount of the customers at the international
4 exchange. The non-exchange customers, the U -- those are
5 all -- excuse me, I went too fast -- the U.S. customers, all
6 of those different creditor constituencies are of course
7 within our purview and something we take, again, very
8 seriously.

9 So we don't see any conflict, but I do want to
10 emphasize -- and I know I said this just a second ago -- that
11 the plan support agreement is a significant development, and
12 the ad hoc committee and the other stakeholders around the
13 table were important parts in getting us to where we are now.
14 And, as we've said over and over again in these cases, the
15 goal of the official committee, and I know it's of the
16 debtors as well, is to maximize recoveries for all of the
17 creditors and to find an exit to bankruptcy at the soonest
18 possible date, and the plan support agreement is an important
19 step in that direction.

20 THE COURT: Okay. Thank you.

21 MR. PASQUALE: Thank you, Your Honor.

22 THE COURT: Mr. Hackman?

23 MR. HACKMAN: Good afternoon, Your Honor, may it
24 please the Court, Ben Hackman for the U.S. Trustee. I rise
25 to confirm that our office is not prosecuting our objection

1 here today.

2 THE COURT: Are you withdrawing the objection? I
3 was a little confused by the language you used in the email.

4 MR. HACKMAN: I wouldn't say --

5 THE COURT: I thought you were --

6 MR. HACKMAN: -- I wouldn't say that, Your Honor.
7 I don't want to prejudice our rights in case there is another
8 request made in the future. I want to reserve any and all
9 objections to any future requests to have professional fees
10 be reversed --

11 THE COURT: Well, if there's a future request,
12 you'd have to file another objection -- the committee would
13 have to file another motion and you'd have a right to object
14 to it.

15 MR. HACKMAN: Yes, Your Honor. In case future
16 motions are filed, I want to reserve all of my client's
17 rights and objections on those points.

18 THE COURT: Okay.

19 MR. HACKMAN: Thank you, Your Honor.

20 THE COURT: Thank you.

21 Anyone else in the courtroom before I --

22 (No verbal response)

23 THE COURT: No. Okay. Do either of the --
24 Mr. Rabbitte. I hope I pronounced your name correctly.

25 MR. RABBITTE: That's correct, Your Honor. Good

1 afternoon. Can you hear me clearly?

2 THE COURT: I can. Thank you.

3 MR. RABBITTE: Firstly, thank you for allowing me
4 the opportunity to speak to you and your Court today.

5 As you know, these cases have affected millions of
6 people around the world and I'm just one of them. I am most
7 definitely not an expert in bankruptcy, far from it, but just
8 like many thousands of others with significant personal funds
9 tied up in this estate, I've had to learn how bankruptcy
10 works along the way. I, along with countless other affected
11 creditors, on social media have been following the case,
12 trying to make sense of how we achieve the goals of funds
13 recovery. And, as such, we all want what is best for our
14 collective recovery.

15 When I first read the U.S. Trustee's objection to
16 the fee reimbursement portion to the ad hoc committee, the
17 points raised by the Trustee made sense to me. As matters
18 have progressed, the transparency of the bankruptcy process
19 is also something that's become clear to me and, with that, I
20 saw that many things get filed on the docket, so I started to
21 do some research. When I first saw statements saying that
22 the ad hoc committee solely represents the interests of dot
23 com customers like me, to be honest, Your Honor, that didn't
24 make a whole lot of sense concerning what I had seen on the
25 docket. I'm talking specifically about what the ad hoc

1 identified as their members. It appears that there are
2 claims that represent not only dot come customers, but also
3 non-customer payments. And, Your Honor, I can give you some
4 examples and cite some examples. For instance, ad hoc
5 includes Claim Numbers (indiscernible) 13 and (indiscernible)
6 16, which account for 17 million in non-customer claims;
7 Claim Numbers 202 and 203, which account for 8.7 million in
8 non-customer claims; and as well as the secured claims
9 against Alameda Research for 24 and a half million, which
10 correspond with Claim Numbers 4403 and 4297.

11 In addition, a statement made by the ad hoc
12 committee on August 18th seemed to imply a contradiction of
13 the very legal arguments that were the basis of the property
14 claim they purport to represent. Their statement said, and I
15 quote, we generally support the treatment of all FTX
16 customers equally irrespective of the type of digital assets
17 held as of the petition date and subordination of claims with
18 respect to crypto tokens to general unsecured claims, end
19 quote.

20 The valuation of digital assets as of the petition
21 date could be the item that I'd expect the ad hoc to be
22 firmly against in the debtors' draft plan (indiscernible)
23 support of others.

24 Lastly, while the ad hoc's response indicated no
25 (indiscernible) preference (indiscernible) activity would

1 indicate that one of the ad hoc's members, namely GSR (ph),
2 withdrew \$14 million worth of (indiscernible) coins from
3 November 6th and 7th, right before withdrawals were halted.

4 Given the already high fees of this case
5 generally, it concerned me that adding these reimbursements
6 would increase the fees to the estate on the one hand, but,
7 more importantly, I didn't understand how these fees would be
8 specifically going to represent dot com customers. It also
9 appeared that (indiscernible) had an outsized role on the ad
10 hoc committee based on what I had heard from the directors,
11 and that, of course, concerned me.

12 On top of all of that, the other points that were
13 raised by the U.S. Trustee largely made sense to me as well,
14 so it's on that basis that I decided that I would take this
15 opportunity to object to this motion.

16 Your Honor, I very much appreciate you taking the
17 time to hear what I've had to say today, and for your
18 guidance and wisdom on this issue.

19 THE COURT: Okay, thank you.

20 MR. RABBITTE: Thank you very much, Your Honor.

21 THE COURT: Thank you, Mr. Rabbitte, I appreciate
22 your comments.

23 Mr. Carter, are you on the call?

24 MR. CARTER: Yes, Your Honor, I'm here. Can you
25 hear me?

1 THE COURT: I can.

2 MR. CARTER: Thank you, Your Honor. My name is
3 Simon Carter, for the record. I'm not familiar with speaking
4 in front of such a forum, so I'll do my best.

5 There are, in principle, two points I'd like to
6 make. First, it seems to me that justification for the fee
7 and reimbursement motion is married to the performance of the
8 ad hoc committee, what they have done and what they are going
9 to do. The platform upon which the ad hoc committee stand
10 is -- or, rather, was the assets held by ftx.com belong to
11 its customers, that was their adversary complaint, it was not
12 for the benefit of the estate and it formed the playing field
13 upon which they engaged within these bankruptcy proceedings.
14 The debtors, on the other hand, continue to allege those
15 assets belong to the estate.

16 Asset ownership is clearly a gating issue and
17 remains the elephant in the room, but there has been no
18 progress by the ad hoc committee in open court.
19 Consequently, the question of who owns the digital assets
20 remains uncertain, and it seems to me that the ad hoc
21 committee have abandoned their platform. And, according to
22 the debtors, some months ago, the ad hoc committee began
23 negotiating with the debtors for a plan of reorganization to
24 represent the interests of their constituents, and the
25 settlement and plan support agreements to which the ad hoc

1 committee have now subscribed underlines their adversary
2 complaint will go no further.

3 Your Honor, you know, I'm reminded of the
4 reluctance of the ad hoc committee to get involved in the
5 oral argument about digital asset ownership at the September
6 the 13th omnibus hearing. This, to my mind, reflected a
7 missed opportunity to represent their mandate; it
8 miscalculated that ownership remains a priority issue for
9 customers at large, you know, customers who have their life
10 savings at stake.

11 So, taking a step back, has the ad hoc committee
12 achieved the mission they set out to do, to test the
13 ownership of assets in this court? No, they have not. Has
14 the ad hoc committee represented the interests of all
15 customers? I don't believe they have represented the best
16 interests of digital asset holders who are arguably the
17 largest population of customers.

18 It is evident from the second draft plan of
19 reorganization that the ad hoc committee has had a positive
20 impact that would benefit some customer groups, including
21 preference customers who withdrew assets in the days before
22 the collapse, but this is an achievement made on a different
23 playing field from the one the ad hoc committee set out to
24 play on. If I was marking their homework, I'd have to say
25 they haven't met the term of their assignment; therefore, the

1 ownership -- therefore, as the ownership question is
2 unresolved, I object to paying legal fees and future
3 disbursements that would be, you know, a potential misuse of
4 customer-owned assets which do not belong to the debtors'
5 estates.

6 The second point I want to make is very much
7 related to the first. To my mind, it's fundamental that the
8 Court has opportunity to deliver its opinion on the gating
9 ownership issue. This is why I've been compelled to submit a
10 motion for opinion *pro se*, so that Your Honor can do just
11 that, to provide your opinion in answer to the question whose
12 digital assets are they. It's a matter essentially contained
13 within the four corners of the terms of service. These were
14 the rules which I and thousands of similarly situated
15 customers read and understood to apply to our assets when
16 using the platform. However, the debtors and the ad hoc
17 committee are now joined in their thinking that to unravel
18 the ownership issue is too complex, it will take too long, be
19 too expensive, and, in any case, the assets are now gone, but
20 that view is primarily focused on the aftermath of the
21 collapse, it skates over the fact that establishing ownership
22 does not turn on the ability to trace the digital assets.
23 Tracing or recovery or restitution or a plan of
24 distribution -- sorry, a plan of reorganization is the step
25 that follows after ownership is known.

1 So, Your Honor, regardless of what crypto assets
2 remain in the debtors' possession or not, as the case may be,
3 the ownership question could still be answered. For example,
4 title to property is not lost merely because the property has
5 been stolen, and it's important not to lose sight that
6 missing crypto assets are the direct result of FTX
7 misappropriating customer property. This has now been
8 established beyond reasonable doubt in the criminal and civil
9 courts, but the ad hoc committee, if I understand correctly,
10 is now complicit with the debtors' allegation that customer
11 assets fall within the estate; that is, unless a customer can
12 prove a claim to a particular crypto coin in a particular
13 omnibus pool. And, I must agree, that would be a complex
14 undertaking, but in my opinion it's also wrong-footed. It
15 fundamentally misstates that the coin in the custodial wallet
16 is the entirety of the digital asset, it was not. Rather,
17 the digital asset, as was defined in the terms of service,
18 was a crypto token issued by the platform and held in my
19 account, and that token remains identifiable in my account
20 today. It's that token which provided an entitlement to an
21 equivalent coin held in the omnibus pool; that is, to a
22 fungible coin which is identical to the next. Just as a
23 dollar is a dollar, a bitcoin is a bitcoin is a bitcoin.

24 Your Honor -- and I'm not about to rehearse the
25 arguments of my motion, though I'm conscious I've already

1 strayed into some of the merits, but it was necessary ground
2 to cover to make a point. Your Honor's opinion on the
3 ownership matter may well shake the foundation of these
4 proceedings and I hope it does, for myself and similarly
5 situated customers. Confirming the digital assets belong to
6 the customer and not to the estate is the quickest way to
7 move forward and ensure everyone gets what they are legally
8 entitled to. This ensures everybody is treated fairly.
9 There should be no room for sharp elbows of an individual
10 creditor group trying to advantage themselves over others.

11 But the point I want to make is this: Before
12 committing to reimburse the past and future legal fees of the
13 ad hoc committee, whose defined contribution is presently
14 based around the settlement and draft plan of reorganization,
15 it would be the right order of things to first establish what
16 the future looks like before committing to fund the players
17 who will play the game. I've been in contact with several
18 customer groups who would seem to have skills and experience
19 that would also bring value to the table.

20 For these reasons, I cannot support a motion to
21 reimburse the legal fees of the ad hoc committee, whose
22 working mandate is to invade property which is not considered
23 to form part of the debtors' estate. Respectfully, it would
24 seem premature to enter into such a commitment until there is
25 clarity on the gating issue.

1 And, Your Honor, while I think of it, there's one
2 final brief point I'd like to make and that is to look at
3 related bankruptcies of Celsius and BlockFi, whose custody
4 services and terms were the same as FTX. These platforms
5 also used crypto tokens and crypto token entitlements as a
6 means to identify fungible coins belonging to customers held
7 in omnibus pools. But, moreover, what is particularly
8 striking is that early on in those bankruptcies it was the
9 debtors who acknowledged, due to the terms of use, that those
10 digital assets held in custody in the omnibus pools belonged
11 to customers and not to the estate.

12 Thank you.

13 THE COURT: Okay. Thank you, Mr. Carter.

14 Mr. Carter, just a couple of points. You talk
15 about the mandate of the ad hoc committee, but the ad hoc
16 committee, as we've been talking in the courtroom and you
17 might not have understood the legal terminology, they are not
18 a fiduciary of the estate. So they don't have an obligation
19 to anyone other than those who are members of the committee
20 itself and they're acting on their behalf.

21 And the other point I wanted to make is your
22 motion to -- for an opinion, I know that's something they do
23 in the UK, but under the rules and the law of the Bankruptcy
24 Code here in the United States, I cannot give you an advisory
25 opinion, I have to have something that is in front of me that

1 gives me the basis for that. And because you're asserting
2 that the property being held by the debtors is your property,
3 that requires under the Bankruptcy Code the filing of an
4 adversary proceeding, which is what the ad hoc committee did
5 initially, they filed an adversary proceeding. It was
6 basically a complaint, a lawsuit, alleging that the property
7 belonged to the customers, not to the debtors' estates.

8 So I can't rule on your motion for opinion, it
9 would have to be an adversary proceeding that would have to
10 be filed, and that would have to be litigated, which is why
11 the ad hoc committee came to the conclusion that it was
12 better to resolve the issues through this plan support
13 agreement to avoid the costs of litigation. And the debtors
14 would have vigorously defended that lawsuit and the costs
15 would have been astronomical compared to being able to
16 resolve this in an amicable fashion.

17 So I just wanted to make sure you understood those
18 procedural issues regarding what you filed. Okay?

19 MR. CARTER: Okay. Thank you.

20 THE COURT: All right. And, with that, I'm going
21 to -- let's let Mr. Harvey, on behalf of the ad hoc
22 committee, respond to the two *pro se* claimants first.

23 MR. HARVEY: Excuse me, Your Honor, for the
24 record, Matthew Harvey from Morris, Nichols, Arsh & Tunnell.
25 Thank you for the opportunity to respond.

1 One thing I'll note, Your Honor, is my co-counsel,
2 the lead counsel to the ad hoc committee, Erin Broderick from
3 Eversheds Sutherland, is on the phone and I may ask her to
4 jump in on a couple of the points that she's closer to. But
5 I'll start with saying that we reached out to both of these
6 claimants, I'm not sure that either of them has responded to
7 us, because I think that their viewpoints are valuable and I
8 think, once they talk to us, they'd understand that we've
9 considered all of those viewpoints and we've incorporated
10 them into our analysis and evaluated the strengths and
11 weaknesses of them.

12 And I think Your Honor just touched on this, in
13 terms of process, and this goes -- specifically, I believe
14 Mr. Carter pointed out that -- and I think he acknowledged
15 that the effort of tracing these assets would be -- and Your
16 Honor just said -- it would be a very significant undertaking
17 probably involving, you know, months, if not years of
18 discovery and undertaking.

19 So we filed the action, we filed a summary
20 judgment motion, but our summary judgment motion was on the
21 threshold question of what do the terms of service say and,
22 in concept, does this provide, you know, what we call a legal
23 trust, an express trust, or does it provide some form of
24 equitable trust, to the extent the assets aren't sitting
25 there, constructive resulting. Otherwise, there's other

1 theories, and these were alluded to in the *pro se* objectors'
2 comments, that does it even not become property of the estate
3 if it's embezzled or stolen, but you still have the secondary
4 problem of tracing these. And we believe, of course, there
5 are theories you could try to do that in the aggregate and
6 that, in and of itself, is a significant undertaking, but on
7 a creditor-by-creditor basis it's even more significant and
8 probably prohibitive for individual customers and that was
9 certainly a significant factor in what we considered.

10 You also have the tension, and I'm not sure if
11 they recognize this, between what benefits -- a
12 declaration -- I heard a criticism, I don't remember which
13 one of them, that you might want to go after preference
14 recoveries more, but of course a determination that this is
15 customer property would mean that those were not preferences.
16 So you can't have it both ways. You can't say that these are
17 categorically customer property and, therefore, you know, no
18 one else in the estate should have any piece of it, unsecured
19 creditors, but let's also go recover what was sent out to
20 people prepetition.

21 And, again, these are complex issues. We have
22 people on our committee that both have preference exposure
23 and don't, and this is things that we -- we, in consultation
24 with those -- discussing with those people, discussing
25 (indiscernible) professionals with the debtors and the

1 committee, and then also with the, you know, hundreds of
2 other people that we talk to, we take those views into
3 account and we reach a settlement. And you have a settlement
4 now that proposes to distribute 90 percent or upwards of 90
5 percent of all distributable value in the estate, recognizing
6 the strength of the arguments that there is customer
7 property.

8 So I think that, Your Honor, that I would
9 encourage both of these claimants to engage with us and
10 discuss with us and, you know, even consider joining our
11 group. Again, the membership is open. I think, you know,
12 these are two customers out of millions, the only ones
13 objecting to the relief requested today. We're happy to
14 engage with them. We don't think that their criticisms of
15 the group are fair.

16 As Your Honor observed, we did file an adversary
17 proceeding, we immediately -- or almost immediately filed a
18 motion for summary judgment. We were prepared to go forward
19 on that until invited to try to resolve these issues
20 consensually. And I think, as Your Honor has observed in
21 other cases, like Mallinckrodt and other complex cases, the
22 cost-benefit analysis of continuing to litigate can often
23 become prohibitive once you think of the cost of doing that
24 versus the benefit you can get from settling.

25 I'll pause here and see if my co-counsel Ms.

1 Broderick wants to address anything, if that's okay with Your
2 Honor.

3 THE COURT: That's fine.

4 Ms. Broderick?

5 MS. BRODERICK: Thank you, Your Honor, and I
6 apologize for technical difficulties joining by my phone and
7 without video. But for the benefit of the customers that are
8 listening on the phone and to address the threshold question
9 of the benefit of the estates and the debtors, I think it's
10 important to recognize here that there's no dispute that the
11 ftx.com customers constitute the vast majority of the
12 residual beneficiaries of the estates. But, as Mr. Carter
13 properly points out, the estates here are in question,
14 whether or not the assets that are being administered by the
15 debtors belong to them or should be returned to customers.

16 The ad hoc committee has deeply analyzed these
17 customer property ownership rights from the outset of the
18 cases, has a command of the factual context and of bankruptcy
19 law, and has analyzed the hurdles to judgment, the attendant
20 costs and delay associated with receiving such judgment, from
21 the vantage point of very diverse customers. We have done so
22 because our membership is composed of those diverse
23 viewpoints and interests.

24 And it's important to recognize that the position
25 around, which we acknowledge is growing dissent among

1 different (indiscernible) groups, whether they hold digital
2 assets or (indiscernible) or they have preference exposure or
3 not, knowingly or not by those advancing them, they turn on
4 customer property rights arguments, again, from preferences
5 to valuation dates and methodology, to in-kind distributions,
6 to ability for customers to have an upside in the estates.
7 And we want customers to understand that we have not only
8 well understood these arguments, but we've articulated them
9 to the debtors and to the official committee. We've been
10 able to objectively evaluate their arguments, and with all of
11 us having the expertise and experience in Chapter 11 cases.

12 And, again, the purpose in our bylaws is, in a
13 cost-efficient and timely manner, to increase returns to all
14 holders of ftx.com claims. The distinctions that are
15 recognizable we're acutely aware of, and I think will
16 continue to be heard in these cases, have nothing to do with
17 the holder of the claim being an original or secondary
18 holder, they have to do with the claim itself. And as co-
19 counsel, I think, well put forward, but I want customers to
20 understand that in order to get a judgment that they are
21 seeking from diverse vantage points, there will be uncertain
22 litigation that will delay these proceedings and our plan
23 process, have an impact on 2.0 exchange, et cetera.

24 So what we've done, and I think it has been not
25 only a substantial contribution to the estates, but it has

1 kept these estates together, is to take all these viewpoints
2 and come up with creative solutions that have a consensual
3 path forward where all ftx.com customers are going to be
4 better than the alternative.

5 THE COURT: Okay. Thank you.

6 MR. HARVEY: Thank you, Your Honor.

7 THE COURT: Hold on, Mr. Rabbitte, I'm going to
8 let the committee -- or, I'm sorry -- yeah, the committee and
9 the debtors respond first, and then I'll come back and let
10 you make additional comments.

11 MR. GLUECKSTEIN: Your Honor, for the record,
12 Brian Glueckstein for the debtors, just a couple of points.

13 Just taking a half step back, we're not asking for
14 approval today of any settlement or any compromise of the
15 customer property issue. The debtor is going to be filing an
16 amended plan, as we've said, and a disclosure statement for
17 that plan in December. Those documents are going to explain
18 the plan terms, the terms of the proposed resolution of the
19 ad hoc's customer property litigation, what the result of
20 that means for creditors of ftx.com and the other estates.
21 We'll have information with respect to estimates in terms of
22 what -- for the first time of what people are likely to see
23 out of this case.

24 That's part of the process and of course, as Your
25 Honor knows, in the plan process solicitation, the disclosure

1 statement's approval will proceed and creditors who are
2 entitled to vote will have the opportunity to weigh in on
3 what we've proposed and what the ad hoc -- that we've
4 negotiated with the ad hoc and the committee on these issues,
5 and they'll have an ability to voice their view.

6 The question for today is whether or not the
7 debtor, who is the movant here, has satisfied its burden
8 under Section 363, as Your Honor has articulated in the
9 context of these types of requests, that on the unique facts
10 of this case it is appropriate for the debtor to use estate
11 resources to perform under the reimbursement agreements, and,
12 again, we submit that we have. The un-refuted testimony of
13 Mr. Ray is clear. The debtors believe there's been a
14 collective benefit to the estates by organizing this plan
15 formation process, by having a counterparty to speak based on
16 a representative group of the ftx.com creditors to negotiate
17 these issues with and, in doing so, come to a resolution of
18 the pending adversary proceedings, which are the pending
19 litigation on these questions.

20 And, of course, there has not been an abandonment
21 of that litigation, there's been a proposed settlement of
22 that litigation, and that settlement includes certain
23 benefits, substantial benefits, to the customers of the
24 ftx.com exchange as a result of those arguments. The debtors
25 have defenses to those arguments. As Your Honor pointed out,

1 there would be protracted litigation if we need to litigate
2 those issues.

3 So what we have here is a settlement that is part
4 of a larger puzzle where we're putting together a plan that,
5 to Mr. Pasquale's points, we're trying to get the debtor out
6 of bankruptcy and get all of the value that the debtor has
7 been successfully marshaling, recovering, and then bring back
8 into the estate and out to customers and to other creditors
9 in accordance with that plan. And that process is going to
10 move forward. The plan support agreement is a substantial
11 milestone in this case having the support of the ad hoc
12 committee, of the official committee, and of the debtor, and
13 it provides the framework that will allow us to bring a plan
14 forward in short order before the Court.

15 So, again, we submit, Your Honor, that on the
16 facts of this case we think it is appropriate to permit the
17 debtor to perform under the reimbursement agreements, and
18 certainly all issues with respect and all parties' rights
19 with respect to the plan issues and the settlement of
20 litigation all reserved.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Pasquale, anything further?

24 MR. PASQUALE: Nothing to add, Your Honor, unless
25 you have questions.

1 THE COURT: All right, no questions.

2 Mr. Rabbitte, I'll give you an opportunity to
3 briefly make additional comments.

4 MR. RABBITTE: Thank you, Your Honor. I just want
5 to come back in briefly with two counterpoints.

6 Counsel for the ad hoc mentioned the enormous
7 difficulty there would be of tracing digital assets. I may
8 not know much about bankruptcy process or bankruptcy law, but
9 I do understand cryptocurrency, and cryptocurrency is
10 fungible. And so that arduous task can be set aside because
11 bitcoin is bitcoin, the same as one dollar is fungible as
12 opposed to another dollar. So I just wanted to make that
13 point that it's not necessarily -- it doesn't have to be this
14 arduous, insurmountable problem.

15 And my second point is that the ad hoc approached
16 this process with a very serious issue and what is a very
17 serious issue for the 1.4 million creditors that are out
18 there, which is property rights and digital assets rights.
19 And, to my mind, if they are not challenging petition date
20 valuations when they approach with that argument, then
21 they're not prosecuting on that basis at all.

22 To be candid, Your Honor -- and I'll leave this as
23 my final comment -- what creditors believe, what many
24 creditors believe is they've taken a very serious issue and
25 they're using that as leverage on the basis of negotiating

1 for preferences. That is what many creditors believe and I
2 just wanted to leave you with those points. Thank you for
3 the opportunity.

4 THE COURT: Thank you, Mr. Rabbitte.

5 You know, I don't want to get into specifics on
6 too much of this, but the issue of tracing is one that is --
7 the fact that you said that crypto is fungible actually
8 creates the tracing problem because, once fungible assets are
9 consolidated into another account, then there's all kinds of
10 legal ramifications to that that require unwinding of the
11 issues and sometimes it's not even possible to trace. So
12 that's why the tracing issue is a problem.

13 The other thing, Mr. Rabbitte, is that you will
14 have the opportunity when the debtors file their disclosure
15 statement and plan of reorganization to object to both of
16 those, the disclosure statement and to the plan of
17 reorganization, if you believe that something in there is
18 inappropriate. Okay?

19 MR. RABBITTE: Thanks, Your Honor. Thank you.

20 THE COURT: Mr. Carter, do you want to be heard?

21 MR. CARTER: Yes, Your Honor, let me just start my
22 video.

23 I just want to echo, to a degree, what
24 Mr. Rabbitte was saying, reemphasizing the fungibility of the
25 assets. It was a comment that was made that the -- in terms

1 of the assets we're talking about, when a customer placed
2 their -- deposited their money with FTX, FTX took that and
3 issued them with a token. The token represented whatever the
4 particular coin was they were buying as a bitcoin and that's
5 the -- the crypto token is what the customer held in their
6 account.

7 The terms of service relate to those -- that
8 particular token was held in the account as belonging to the
9 customer and that token provided an entitlement to an
10 underlying asset, the fungible asset that is bitcoin.

11 So we don't need to look at what was in the
12 omnibus pools to understand who owned what, we only have to
13 look at the token that was in the customer account because
14 that was the asset, that was the starting point of describing
15 to a customer what they owned. What the ad hoc, the
16 committee, what the debtors are doing is they're looking at
17 what's left in the custodial pools and that's the wrong way
18 about it. They're not starting at the first position,
19 they're starting at the -- somewhere down the chain; they're
20 not looking at what was the asset that was owned. That's the
21 first point I wanted to make.

22 The second point is the legal point, the legal
23 points of ownership. If these assets are owned by customers,
24 then how can they be within the debtors' estate, how can that
25 rightfully -- those assets rightfully be used in a plan of

1 settlement? If they're not supposed to be in the estate,
2 then why is the estate using them? And the only way, to me
3 it seems, we can get to the bottom of that is by having the
4 matter decided in court.

5 So my final question that I will ask you is, Your
6 Honor, you mentioned that adversary judgment is the way to go
7 forward with this, will the Court accept a *pro se* submission
8 to that effect?

9 THE COURT: Certainly, you can file anything you
10 wish as a *pro se* claimant, Mr. Carter, in the case.

11 MR. CARTER: Okay.

12 THE COURT: Yeah, so it would be an adversary
13 proceeding, is what it's called, which is initiated through a
14 complaint. And I can't give you advice on how to do that,
15 that's something you'll have to -- I would recommend you
16 might want to have counsel help you with that because it can
17 be complicated

18 MR. CARTER: Okay.

19 THE COURT: Okay?

20 MR. CARTER: Thank you, Your Honor.

21 THE COURT: All right. And, as I said to
22 Mr. Rabbitte, you also will have the opportunity to object to
23 the disclosure statement and the plan of reorganization when
24 that comes down the road.

25 MR. CARTER: Okay. Thank you, Your Honor.

1 THE COURT: Thank you.

2 Anything further?

3 (No verbal response)

4 THE COURT: All right. I was a little bit
5 concerned about approving this, given what I asked
6 Mr. Glueckstein about at the beginning about whether or not
7 this wasn't just the ad hoc committee acting on behalf of
8 itself and having an incidental benefit on the estate as a
9 whole, but I'm satisfied under the unique facts and
10 circumstances of this case, not least of which is the
11 millions of customers that are involved here, that it makes
12 sense that there be at least one voice -- or in this case 66,
13 I guess, voices -- who can act through counsel to help steer
14 this process to a plan of reorganization, given the diversity
15 of the interests, as Mr. Glueckstein pointed out and Mr.
16 Harvey pointed out, there's this diversity of interests
17 between those who are creditors and also customers and those
18 who are just creditors.

19 And I think having the ad hoc committee involved
20 in that process is beneficial to the estate as a whole and,
21 therefore, I will overrule the objections and will approve
22 the debtors' agreeing to pay the fees as outlined in their
23 reimbursement agreement with the ad hoc committee.

24 Any questions?

25 MR. GLUECKSTEIN: No questions. Thank you very

1 much, Your Honor.

2 THE COURT: Do we have a clean version? I saw the
3 revised version that came up, it was a blackline. Do you
4 have the clean version uploaded for entry?

5 MR. HARVEY: Your Honor, I'm going to need to
6 check. If it's not already uploaded, it will be uploaded
7 this afternoon.

8 THE COURT: All right. As soon as it gets
9 uploaded, we'll get that entered for you.

10 MR. HARVEY: Thank you, Your Honor.

11 MR. GLUECKSTEIN: Great. Thank you very much,
12 Your Honor.

13 I think that brings us then to the adversary
14 matter's portion of the agenda, and I think the first item
15 going forward is Item 13, which are the motions brought by
16 Platform Life Sciences, so we'll turn it over to them.

17 THE COURT: That's going to take a little bit
18 longer. Do we have -- I don't want to hold up those who have
19 just -- are there any of these that are going to be short
20 because I don't want to have people just stick around if they
21 don't need to.

22 MR. GLUECKSTEIN: It's hard to say, Your Honor. I
23 think certainly the -- that one, I think, at least has
24 evidence, I think the other items on the agenda are a motion
25 for a protective order, which is argument, and the short

1 status conference. So we could take them out of order, if
2 Your Honor prefers.

3 THE COURT: Why don't we do the status conference
4 at least first --

5 MR. GLUECKSTEIN: Sure.

6 THE COURT: -- get that out of the way and then
7 we'll --

8 MR. GLUECKSTEIN: Sure. I'll turn it over to the
9 U.S. Trustee then.

10 THE COURT: Okay.

11 MR. HARVEY: Good afternoon, Your Honor. Before
12 we turn to other matters on the agenda -- Matthew Harvey from
13 Morris, Nichols, Arsh & Tunnell on behalf of the ad hoc
14 committee -- in the spirit of efficiency, which we've also
15 tried to accomplish here, may I and my colleague be excused
16 for the remainder of the hearing?

17 THE COURT: Yes, certainly.

18 MR. HARVEY: Thank you, Your Honor.

19 THE COURT: I always like to save money.

20 MR. HACKMAN: Good afternoon, Your Honor, Ben
21 Hackman for the U.S. Trustee.

22 The U.S. Trustee asked for a status conference
23 today to briefly discuss Morgan Lewis's fees in the Emergent
24 Fidelity Technologies LTD. case, it's Number 23-10149, *vis-a-*
25 *vis* the FTX fee examiner.

1 Your Honor approved Morgan Lewis's retention as
2 Emergent's bankruptcy counsel on April 10th, 2023, effective
3 as of Emergent's petition date. On September 20th, 2023,
4 Your Honor entered an order approving Morgan Lewis's first
5 interim fee application, that's Docket Item 2647. Although
6 the fee examiner order does not currently cover the Emergent
7 debtor's professionals, that order preserves the U.S.
8 Trustee's right to request a status conference with the Court
9 regarding an extension of the fee examiner order to cover
10 Morgan Lewis's fee applications as counsel for Emergent.

11 Morgan Lewis has now voluntarily agreed to the
12 U.S. Trustee's request that Morgan Lewis's fee applications
13 to the Bankruptcy Court beyond Morgan Lewis's retainer will
14 be subject to the FTX fee examiner order. This agreement
15 does not apply with respect to any of Emergent's offshore
16 professionals.

17 Our office understands that Emergent expects to
18 file in the near future a proposed cross-border protocol that
19 will address the compensation of Emergent's offshore
20 professionals. The U.S. Trustee's right to object to the
21 proposed protocol, including whether offshore professionals
22 should be subject to the fee examiner order, is reserved.

23 Emergent's counsel authorized me to communicate
24 this to Your Honor. Unless Your Honor has any questions,
25 that's all I have.

1 THE COURT: No questions. Thank you.

2 MR. HACKMAN: Thank you, Your Honor.

3 THE COURT: Anyone else wish to be heard on that
4 issue?

5 (No verbal response)

6 THE COURT: All right, thank you.

7 Okay, next. Do you want to do the --

8 MR. GLUECKSTEIN: We can go -- would you like to
9 proceed with the motion to dismiss or the protective order
10 motion, Your Honor?

11 THE COURT: Let's do the protective order motion.

12 MR. GLUECKSTEIN: Okay, then we'll --

13 THE COURT: That probably won't be as long as the
14 other one because there's two motions there, right, a motion
15 to dismiss and a motion -- well, two motions to dismiss, one
16 for --

17 MR. GLUECKSTEIN: Yeah, although I think one is --

18 THE COURT: -- lack of personal jurisdiction.

19 MR. GLUECKSTEIN: -- one is substantive on
20 the 12(b) (2) issue, I'm not sure the other one is, but, yes,
21 they are both -- but we'll turn it over to counsel for the
22 movants on the protective order.

23 THE COURT: Okay. Mr. Arbogast?

24 MR. ARBOGAST: Good afternoon, Your Honor.

25 Gregory Arbogast, on behalf of Brandon Williams in the

1 adversary proceeding of FTX Trading and Maclaurin Investments
2 against Brandon Williams, *et al.*

3 If it pleases the Court, my colleague Lawrence
4 Gebhardt will be arguing the motion. He's admitted *pro hac*.

5 THE COURT: Okay. Thank you.

6 MR. GEBHARDT: Good afternoon, Your Honor.

7 This suit, at least as it pertains specifically to
8 Brandon Williams, a defendant, alleges actual and
9 constructive fraudulent transfers by FTX Trading and the
10 Antiguan corporation in its acquisition of Digital Assets, a
11 Swiss corporation in July and November of 2021. The
12 defendants have all moved to dismiss for lack of subject-
13 matter jurisdiction and the Court, due to the improper and
14 unauthorized filing of the bankruptcy petition, which, of
15 course, then carries over to the institution of the adversary
16 proceeding and the lack of subject-matter jurisdiction of
17 this Court to adjudicate the adversary proceeding.

18 All of the defendants have moved to dismiss for
19 failure to state a claim. Brandon Williams, specifically,
20 has alternatively moved for summary judgment as to the counts
21 pertaining to him. Those motions are not a basis, at least
22 as to Brandon Williams, for requesting a protective order,
23 but solely the aspect pertaining to the lack of subject-
24 matter jurisdiction.

25 Now, Brandon Williams has moved for a protective

1 order under Rule 26(c) to defer discovery until the Court has
2 ruled on the pending motions to dismiss for lack of subject-
3 matter jurisdiction. The other defendants, as of yesterday,
4 joined in this motion and they are the principal proponents
5 of the lack of subject-matter jurisdiction of the Court in
6 motions they filed in the main bankruptcy case, as well as a
7 portion of their motion in the adversary proceeding.

8 The basis of the motion for a protective order is
9 Federal Rule 26(c) (1) to avoid undue burden and inordinate
10 expense that the discovery will entail until the subject-
11 matter jurisdiction issue has been resolved.

12 The case is at its inception. The complaint has
13 been filed and responded to with motions. A case management
14 plan was agreed to before the motions were filed. Initial
15 disclosures have been made. The plaintiffs have filed
16 discovery requests that have been timely responded to by all
17 of the defendants; basically, document-production requests.
18 The other defendants have served discovery on the plaintiffs.
19 Brandon Williams has prepared it, but has not filed it. We
20 have extensive document requests, interrogatories, and
21 requests for admission to file once there's a resolution of
22 the motion for a protective order.

23 The motions to dismiss have been filed, but
24 there's been no response yet; instead, the debtors, in both
25 the main case, have requested additional time to respond to

1 the lack of subject-matter jurisdiction for the filing of the
2 bankruptcy petition. Under the case management order, their
3 response to the motions to dismiss, including subject-matter
4 jurisdiction, in this case, will not accrue until December 1.

5 The discovery in this case will be extensive and
6 will be expensive. Digital Assets, the purchased entity, is
7 a Swiss corporation, subject to Swiss law, including the
8 blocking statute, which is Article 271 of the Swiss Criminal
9 Code. Even though Digital Assets may be owned by a non-Swiss
10 entity, that criminal statute still applies and can prevent
11 us from getting documents that are pertinent to the
12 acquisition and to the operation of Digital Assets before it
13 was acquired by FTX and after it was acquired by FTX and
14 operated for a year.

15 There are other entities that are involved; all
16 European based. For instance, CM Equity, a German brokerage,
17 which might be analogous to Charles Schwab, and RDNA,
18 which -- or excuse me -- KDNA, which is a brokerage that
19 was -- a Cyprus-licensed brokerage, which was acquired, as
20 contemplated in the original acquisition, post Digital
21 Assets' purchase by FTX Trading.

22 There are many individuals who have personal
23 knowledge and will need to be deposed. Reliable contact
24 information is not available in most of them and will require
25 extensive investigation to locate just where they are so that

1 subpoenas, or other deposition notices, and so on, can be
2 served. They're all over the United States, to the extent
3 they're United States citizens. Daniel Friedberg, who was
4 FTX's general counsel, representing FTX in the acquisition is
5 based in Washington. Can Sun, general counsel with FTX,
6 apparently is located in the Bahamas.

7 In Europe, the people that are there get the
8 protection of the European General Data Protection
9 Regulation, which can be very tricky to comply with and will
10 probably involve letters rogatory through the State
11 Department to get them to even come to a discovery
12 proceeding.

13 In the Caribbean, which includes Bahamas and
14 Antigua, there are people that will need to be deposed.

15 Sam Bankman-Fried, who's a critical witness in
16 this case, is in prison. He's testified, so, probably, he
17 can't take the Fifth Amendment, but we've now got to figure
18 out how to get a deposition in the prison system.

19 And, for instance, in his testimony, one of the
20 most ridiculous assertions in the complaint is that Samuel
21 Bankman-Fried was a personal friend of Brandon Williams and
22 paid exorbitant, excess amounts of money to financially
23 benefit Brandon Williams. Bankman-Fried will testify to the
24 contrary. Those two have never met in person. They're never
25 spoke on the phone one-on-one. Their only interaction,

1 basically, was the FTX deal, but we must depose him.

2 We must depose the other FTX people who have
3 testified in the criminal proceedings and are available and
4 around.

5 Attorneys in this action have Sullivan & Cromwell
6 will need to be deposed. Mr. Dietderich, for example, who
7 contends that FTX was insolvent at the time the bankruptcy
8 petition was filed, 5 days earlier, is ensuring the creditors
9 committee attorney in the Voyager bankruptcy in an email that
10 FTX is financially solid as a rock. So we want to find out
11 what happened in that year between November of 2021 and
12 October of 2022, that caused FTX to become insolvent. What
13 happened? What was the change and what justified the
14 statement that you made?

15 There are experts that will need to be both,
16 interviewed and deposed; experts that pertain to the
17 transaction, such as BDO, which did a valuation of the data
18 acquisition at the insistence of FTX shortly after the
19 acquisition was made and found, basically, reasonable
20 equivalents. Prager Metis, an international accounting firm,
21 did audited financial statements of FTX and those financial
22 statements did not show insolvency.

23 There's other evidence of solvency of FTX, such as
24 Mr. Ray's first day declaration, in which he describes
25 solvency to FTX Trading. The parties will be retaining

1 experts to supplement those transactional people that were
2 part of the transaction.

3 Other potential purchasers of data existed and
4 they will need to be deposed because they essentially were
5 prepared to pay roughly the same price as FTX paid, except
6 the deals couldn't go through because FTX already owned 20
7 percent and didn't want competitors owning part of the
8 transaction.

9 The bottom line is that the discovery in this case
10 will be expensive, it will be time-consuming, and it will
11 involve extensive travel.

12 Now, Federal Rule of Civil Procedure 26(c)(1)
13 authorizes the Court to enter an order to protect a party
14 from undue burden or expense -- burden or expense, and that's
15 the basis for the request that discovery be delayed. Just
16 filing -- we readily concede that just filing a motion to
17 dismiss is not sufficient to get a motion for a protective
18 order. That is why when Brandon Williams filed his motion to
19 dismiss or for summary judgment, we did not ask for a
20 protective order to defer discovery because a motion to
21 dismiss for failure to state a claim depends on the
22 interpretation of words. Summary judgment motions can
23 question whether a material fact is or is not in genuine
24 dispute, did not justify.

25 But subject-matter jurisdiction, if it does not

1 exist, ends the case. It's all over. If it's all over, you
2 don't have to do all of those expensive, burdensome things.

3 Now, to get the motion for protective order, we
4 clearly, and we acknowledge we must establish good cause.

5 The grant is in the discretion of this Court based on an
6 evaluation of the cause that's been shown and the
7 reasonableness of the relief that's sought.

8 Now factors that are regularly considered in
9 making this decision: the strength of the motion to dismiss.
10 I believe it's not only strong that subject-matter
11 jurisdiction is lacking, but basically, it's uncontested.
12 The facts are not in dispute. Mr. Dietderich put an
13 affidavit into the record when he was trying to confirm his
14 retention saying, Gee, I didn't have time to get the board of
15 directors to approve the filing of the bankruptcy petitions
16 or the appointment of Mr. Ray.

17 There may have been a hundred corporations, but
18 FTX was the main one. They were there. He never looked, but
19 he knew that he had to do that, yet he didn't do it; instead,
20 he has Bankman-Fried execute an omnibus corporate power that
21 essentially granted omnipotent powers to John Ray, even
22 though Bankman-Fried did not have the authority to do that.

23 The law is clear from Wago and the Supreme Court
24 case of Price v Gurney that's been cited as to what the need
25 is for that corporate approval and authorization under the

1 organizational documents and under local law. So the issue
2 is not one of fact that's going to have to be resolved by
3 this Court, but it's one of law. Basically, under Antiguan
4 law, could John Ray be unilaterally appointed by Samuel
5 Bankman-Fried without authorization from the board of
6 directors, despite what the International Business Act
7 provides and despite what the charter and bylaws of FTX
8 provide.

9 The grant of this motion will end the case. It
10 will all be over and there will be no discovery needed,
11 nothing further going on. The plaintiffs, furthermore, will
12 suffer no prejudice if there's a delay in discovery.

13 So if discovery is delayed for a month or two
14 months, how does that cause distinct prejudice? The
15 plaintiffs do not need discovery to respond to the motion to
16 dismiss. They don't need to depose anybody. The bylaws are
17 there. There's no dispute as to what they are.

18 Mr. Dietderich is around. He can say what he did
19 and why he did it representing the corporation. The delay
20 will be slight, unless the motion is granted, and then the
21 case will be at an end.

22 The extensive nature of the discovery, which we've
23 already said will require an extensive time commitment and a
24 huge expense, not just on the part of the defendants, but
25 also on the part of the estate. I mean, they've got to --

1 the stay will be contested and the depositions will be taken
2 and a lot of money will be spent having Sullivan & Cromwell
3 participate in the discovery.

4 The elements of the claim are extremely involved.
5 Lots of people there, the big factual disputes, if it has to
6 go, and if those factual disputes don't have to be resolved
7 in discovery, then all will be better.

8 Now, I'd like to just briefly respond to some of
9 the *ad hominem* opposition that was filed by FTX. It recites
10 events that were prior to discovery to our, to Brandon
11 Williams' discovery of the lack of subject-matter
12 jurisdiction of the Court. That issue was raised by the
13 other two defendants after extensive research and, frankly, I
14 didn't come upon it until we saw their motion to dismiss in
15 the main bankruptcy case and in the adversary proceeding, and
16 it looked irrefutable.

17 So, with that, we joined in the motion in the main
18 case and filed an additional motion in this case because
19 motions challenging subject-matter jurisdiction may be filed
20 at any time, even on appeal after a case has been tried.

21 Williams has timely responded to the discovery
22 served upon him under the Federal Rules. The defendants have
23 our response and we've said we will produce the documents
24 promptly if the Court denies the motion for protective order
25 or denies the motion to dismiss. We're prepared to do that,

1 if necessary.

2 An argument was made that, gee, they said you have
3 30 days to produce all of these documents, which is what
4 their discovery request said. That's not the Federal Rule.
5 Federal Rule 36 says we have 30 days to respond in writing
6 and a reasonable time and place for the production of
7 documents is what to be decided. FTX, through its lawyers,
8 doesn't get to dictate when and where the documents are
9 produced. We have responded to it.

10 THE COURT: There's a case management order in
11 place.

12 MR. GEBHARDT: Yes, there is a case management,
13 but the case management order was discussed and negotiated
14 before the motion to dismiss for lack of subject-matter
15 jurisdiction was filed. And, frankly, we did very little
16 negotiating on the case management order; most of it was by
17 the other defendants. We were prepared to file a motion to
18 dismiss in September, when the Rules normally provided for
19 it, but the other parties asked for the motions to dismiss to
20 not be due until the end of October. And when that happened,
21 we got a copy of the financial statements and the BDO
22 valuation modified the motion to also include an alternative
23 for summary judgment.

24 But there are dates that have been agreed upon if
25 there's a stay of discovery. Maybe they could be adjusted or

1 maybe they need to -- maybe they could still be complied
2 with. The trial is not, under the schedule that's there,
3 would not be occurring until 2024, the end of 2024.

4 The defendants contend -- excuse me -- the
5 plaintiffs contend that there was clear authority for John
6 Ray, yet, if that authority is so clear and so undisputable,
7 why did they need an extension of time to respond to the
8 motion? They do and they're not going to be able to
9 substantively, correctly respond.

10 They never addressed the merits of the motion for
11 a protective order in their opposition; instead, what they do
12 is they argue things that are irrelevant to it based on,
13 basically, insults and disparagement, not reasoning or a
14 basis that the motion should not be granted.

15 So, we're here to ask that the motion for stay, a
16 temporary limited stay of discovery be granted because good
17 cause exists and the relief requested is reasonable. Neither
18 the defendants, nor the estate should have to bear the burden
19 of extensive time being spent on a case that may end or
20 inordinate expense pursuing discovery that may be of no use.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Debtors?

24 By the way, Mr. Gebhardt, I don't see where you
25 signed in. Did you and your -- did you guys sign in?

1 MR. GEBHARDT: (Indiscernible.)

2 THE COURT: No, that just to get into the
3 building.

4 This is for a record of who appeared at the
5 hearing. You can take it back over there and then bring it
6 back.

7 MR. KEANE: Your Honor, would you like to hear
8 from supporting parties --

9 THE COURT: Oh, yeah.

10 MR. KEANE: -- who filed a joinder before debtors?

11 THE COURT: Yeah, go ahead.

12 MR. KEANE: Okay. I'll try and be brief.

13 For the record, Peter Keane of Pachulski Stang
14 Ziehl & Jones, on behalf of defendants Lorem Ipsum UG,
15 Patrick Gruhn, and Robin Matzke.

16 Your Honor, our co-counsel at Morrison Cohen,
17 Heath Rosenblat, is by Zoom in case I miss anything, Your
18 Honor, and may wish to speak up.

19 But we echo Mr. Gebhardt's comments regarding the
20 motion for stay and we filed a joinder at Adversary
21 Docket 39. Your Honor, we joined in the motion for stay,
22 primarily, from a logistics standpoint. As Mr. Gebhardt
23 mentioned, we filed a motion to dismiss in the adversary on
24 October 27th, as required by the case management order, and
25 on that date, we also filed two motions to dismiss, the

1 Chapter 11 cases of FTX Trading Ltd. and Maclaurin
2 Investments, Ltd. Those are at main case docket numbers 3399
3 and 3400. Those motions to dismiss have not been fully
4 briefed.

5 For the main case motions to dismiss, we've -- I
6 guess the debtors said in their opposition, we've agreed to a
7 briefing schedule, whereby the debtors would respond to those
8 motions by December 13th and our reply would be due by
9 January 5 and with the expectation of having a hearing at the
10 January 17th hearing on those motions.

11 Your Honor, the request for a stay here is very,
12 very limited and it's for a specified purpose. It's to
13 permit the Court to first consider the dispositive issue of
14 subject-matter jurisdiction that we've raised and we believe
15 a stay makes sense for purposes of judicial economy and to
16 save time and expense for both, the estates and, of course,
17 our clients, and the other defendant, Mr. Williams.

18 With the hearing set for January 17th, all the
19 motion seeks is a stay for approximately 60 days. I believe
20 the proposed order on the motion for stay asked for an
21 additional 30 days beyond when the Court rules. So,
22 approximately, 90 days or so. If the motions to dismiss are
23 denied, of course, the cases will go on, likely, for years,
24 Your Honor.

25 Mr. Gebhardt did a very good job of articulating

1 why discovery is very complex; of course, there are other
2 factors the Court considers when assessing a motion for stay.
3 And I think for purposes of today, the Court can look
4 primarily at the prejudice to the plaintiff, which we don't
5 believe there is any here for today's purposes, or,
6 primarily, the reasons I just mentioned.

7 In addition, Your Honor, I'd just briefly like to
8 respond to some of the statements in the debtors' opposition
9 to clarify the record and highlight a few points and I'll try
10 to be brief. To begin, I don't think any of us really
11 understand some of the accusations the debtors made in their
12 opposition and where it's coming from. The debtors used
13 terms to describe the defendants' conduct such as
14 "gamesmanship" and there are suggestions of bad faith, but we
15 think those accusations are misplaced and incorrect and I'll
16 explain why.

17 Our clients filed proofs of claim on June 30th of
18 2023 and the debtor sued us two weeks later in July. And as
19 any litigator knows, Your Honor, the first thing we tended to
20 focus on was negotiating the case management order for the
21 litigation, and we did, but we did so largely in a vacuum.
22 The case management order was entered August 23rd and it set
23 a deadline for the motion to dismiss in the adversary
24 proceeding on August 27th.

25 So we didn't even begin the serious analysis until

1 late August, early September, and we got to work doing what
2 any good lawyers would do, which would be analyzing the facts
3 and causes of action asserted, investigating potential
4 defenses, and, generally, doing a deeper investigation. And
5 it was at that point that we discovered the "lack of a
6 corporate authority" issue that we raised in the motions to
7 dismiss. And as Your Honor knows, and as Mr. Gebhardt
8 mentioned, that's a subject-matter jurisdiction defense,
9 which can be raised at any time by anyone, including the
10 Court on its own. We believe it's a meritorious defense so
11 we included it in the motion to dismiss that we filed in the
12 adversary and also as the basis for the main case motions to
13 dismiss.

14 So that defense came about organically. We were
15 not hiding the ball or trying to sandbag the debtors in any
16 way. We raised it timely when it became relevant and we did
17 so in good faith.

18 The debtors also make some additional suggestions
19 or claims in their opposition, one of which was that we
20 didn't expressly negotiate a reservation of rights in the
21 case management order to file a motion for stay of discovery.
22 And they point to a different adversary proceeding that had
23 such a provision, as if we're omniscient and supposed to know
24 all the nuances of every other litigation.

25 What the debtors don't say in their opposition is

1 that we waived it, because they can't. The case management
2 order is silent on that, without the ability to move for a
3 stay, and we believe it's appropriate to move so.

4 The debtors also indicated that we already enjoyed
5 approximately a hundred days to draft the motions to dismiss
6 without any disagreement about the schedule; the hundred days
7 being measured from the time the complaint was served. But
8 that's not entirely accurate, as I understand it, Your Honor,
9 because the complaint was never formally served. Our clients
10 agreed to waive the service requirements as part of the case
11 management order that would have otherwise been necessary
12 under the Hague Convention, as two of our clients are in
13 Germany, Matzke and Lorem Ipsum. So we could have asserted
14 those rights, but we didn't; we chose to comply with the case
15 management order and waive those and we've complied with the
16 case management order since.

17 And I raise that simply because I recently had to
18 do that in another case, on behalf of plaintiff, Your Honor,
19 go through Hague Convention service, actually, onto
20 defendants in Germany and it took 18 months. So the
21 litigation could be dragging on even slower than it is right
22 now. So in that context, I don't think the stay request
23 that's being asked of Your Honor is, in the context of
24 litigation, is that much.

25 And, finally, the case management order dates are

1 really not compressed. Fact discovery doesn't end until
2 May 17th, 2024. Expert reports start in July. Expert
3 depositions have to be completed in October 2024. We don't
4 even have a trial date set. So all a stay would do, Your
5 Honor, is essentially roll back those deadlines by
6 approximately 90 days or so if Your Honor did grant the stay.

7 So in the context of the proceeding and within the
8 larger context of the cases, we don't think it's much of an
9 ask and we do think it's appropriate here, Your Honor.

10 So, unless Your Honor has any questions?

11 THE COURT: No questions, thank you.

12 MR. KEANE: Thank you, Your Honor.

13 MR. EHRENBERG: Good afternoon, Your Honor.

14 Stephen Ehrenberg from Sullivan & Cromwell on behalf of the
15 plaintiffs in this action.

16 Mr. Gebhardt said that the facts are not in
17 dispute on the motions for dismissal on the basis of a lack
18 of subject-matter jurisdiction. That is simply not accurate.
19 The facts are contested and the plaintiffs will brief that
20 motion on the agreed schedule and demonstrate those factual
21 and legal errors in the motions to dismiss in the main case
22 on the agreed schedule, which is now the same schedule as the
23 schedule for the adversary proceeding motion to dismiss. So
24 no reason those two motions to dismiss couldn't be heard on
25 the same day in the same hearing in January. So we're not

1 that far away.

2 Obviously, all of the facts upon which that motion
3 to dismiss is based were known to all stakeholders in this
4 action a year ago when the case was filed. Nothing new has
5 happened. Nothing has changed.

6 All that the defendants are saying is they didn't
7 discover this purported silver bullet until now and, in fact,
8 Mr. Williams didn't find it until someone else found it for
9 him. And, Your Honor, we submit that is not an excuse for
10 delaying a motion that could have been brought back in
11 August, long before the plaintiffs in this action started
12 expending substantial estate resources to meet their
13 discovery obligations in this case and to prepare to take
14 discovery in this case.

15 So the notion that no prejudice will happen in the
16 few weeks or months that this stay is in place is, first of
17 all, nonsense. But putting that aside, we have already been
18 prejudiced if the stay is entered, because we have already
19 done a tremendous amount of work which we describe in the
20 brief.

21 So the bottom line here, Your Honor, is that this
22 motion is egregiously untimely and, from our perspective, it
23 appears that it has been delayed to obtain a tactical
24 advantage and to cause maximum disruption to our case in our
25 efforts to recover assets that have been fraudulently

1 conveyed to these defendants.

2 And the parties discussed the possibility of the
3 stay in August -- August 3rd, to be exact -- in a meet-and-
4 confer, our first. The defendants asked for an agreed stay
5 of discovery, pending motions to dismiss for all of the
6 reasons that have been articulated here today, other than
7 subject matter.

8 And we said, flat, No, absolutely not. We need to
9 move this case forward and we intend to do so expeditiously
10 and we're going to seek discovery in the ordinary course.

11 Now, the scope of discovery that they describe,
12 I'm not going to try to redefine their scope. They think it
13 is what it is. But whatever they think it is, it hasn't
14 changed since August 3rd. If they thought that they would be
15 prejudiced by engaging in discovery prior to a decision on
16 the motion to dismiss, their time to join issue on that was
17 early August, not after we have done a lot of work that I'll
18 describe.

19 And during the hundred days that they asked for to
20 respond, we could have easily dealt with this a long time ago
21 and we wouldn't be here today, but they didn't do that;
22 instead, they delayed this motion until days before their
23 discovery responses to us were due, and at a time when, of
24 course, we're working on our opposition to their motions to
25 dismiss.

1 In between August 3rd and the time that they have
2 filed their motion, there were a lot of events that called
3 for the defendants to raise their hands and say, you know
4 what? Something has happened. We have a new idea. Stop
5 what you're doing. Don't spend anymore estate resources.
6 Let's talk about a stay again.

7 But they didn't do that; instead, they negotiated
8 a case management order with us and we worked out dates and
9 that was a negotiation. So the idea here, now, that, well,
10 we can just extend them, that's not how a negotiation works.
11 We gave things up. They gave things up. And we reached an
12 agreement. That's why the cases we cite talk about the
13 entering of a scheduling order being important to the
14 issuance of a motion to stay, because those dates should be
15 reliable. Everybody should be able to rely on them, unless
16 something changes.

17 So they negotiated a CMO with us and that CMO
18 includes a substantial completion date for documents, which
19 is not in May. It's January 31, which is rapidly
20 approaching. And that was a negotiated point. We negotiated
21 hard for a substantial completion deadline because it's
22 important to us to be able to know when we will have most of
23 the documents and begin to plan out our deposition schedule.

24 So, after negotiating the CMO, and I think Your
25 Honor mentioned that a CMO was in place and would guide when

1 productions are required, it also requires rolling
2 productions in advance of that substantial completion date.
3 After the CMO was entered, while we certainly did not
4 anticipate a motion to stay, because we kind of dealt with
5 that issue already, we certainly anticipated that the
6 defendants might do something to try to extend the schedule
7 here.

8 So we wrote them a letter on September 21. Now I
9 think it's interesting that counsel has acknowledged that
10 they discovered the silver bullet in September. We sent them
11 a letter on September 21 and said, the plaintiffs are
12 preparing for discovery. We're doing a lot of work. We're
13 gathering data, gathering documents, processing them,
14 reviewing them, identifying things that are going to be
15 responsive to your requests, figuring out who our custodians
16 are, extending substantial estate resources.

17 And, we said, we expect you to do the same,
18 because we are going to be prepared to produce documents to
19 you promptly upon the service of data requests on the
20 schedule agreed in the CMO and we don't want to have a
21 situation where we serve our doc requests, you wait 30 days,
22 you serve objections, then we meet and confer and we figure
23 out our search terms and, you know, we're in March before
24 anyone is producing documents.

25 So we wrote all this out and we asked them at the

1 end of that letter, we assume you're doing the same. Please
2 confirm that you are, and if you're not, tell us, and tell us
3 why you're not.

4 So, if they had discovered, at that point, that
5 they had a new motion that they wanted to file and that maybe
6 there was going to be a stay, it was incumbent upon them to
7 say that, at least by then. And maybe we could have joined
8 issue in September, because we've done a lot of work between
9 September and now.

10 Mr. Gebhardt said the case is at its inception.
11 It's not at its inception; discovery has started. We have a
12 CMO in place. Everybody has served initial disclosures. We
13 have served discovery on non-parties. Those non-parties are
14 now expending their own resources to respond to our discovery
15 requests. We met and conferred with both of those non-
16 parties and worked out what is being done. One of them is
17 actually represented by the same counsel as Mr. Gruhn and
18 Mr. Matzke, so there are no surprises here. A lot of work is
19 being done.

20 We have served discovery on the defendants. Both
21 have objected. Mr. Williams has granted himself a stay of
22 discovery until this Court decides this motion. It's unclear
23 whether Mr. Gruhn or Mr. Matzke intend to produce in advance
24 of a decision on this motion, but either way, we think that
25 is inconsistent with the law.

1 The defendants, in fact, have served voluminous
2 discovery requests on plaintiffs, well after the time that
3 they decided that they had another motion to file. They have
4 served 77 requests for documents, 12 requests for admissions,
5 18 interrogatories. And since the day they arrived, the
6 plaintiffs have been working on responding to them. We have
7 substantial drafts that are in progress and we intend to
8 respond on the due date, which is the day after Thanksgiving,
9 for what that's worth.

10 So, Your Honor, we've done a lot of work here to
11 prepare for discovery and we are ready today to produce
12 thousands of documents to the defendants. The only reason we
13 haven't, and we have advised them of such, is that they
14 haven't signed a protective order.

15 Now, there's a protective order under negotiation,
16 but we gave them the opportunity to sign the protective order
17 in the main case in September when we sent them the letter.
18 We said, you know, as part of our preparation, you should
19 sign this order so we can make productions to you. They
20 didn't. Not only did they not raise their hand in September,
21 they did not respond to that letter in any way, shape or
22 form. Nothing. Silence.

23 So in addition to the thousands of documents that
24 we have identified through our searches and our work, we have
25 also undertaken substantial work to make a document-review

1 platform available to all of the defendants in all of the
2 avoidance actions that will have certain of the materials
3 that were produced to the criminal authorities in the
4 Southern District of New York and that has taken a fair
5 amount of time and expense, as well. It is up and running
6 and we can grant them access to it today if they had signed a
7 protective order.

8 We continue to do substantial work to respond to
9 the discovery requests that have been propounded on the
10 plaintiffs and will continue to do so until ordered otherwise
11 or the due date arrives and we respond. All the while, our
12 substantial completion deadline of January 31 is approaching
13 and at no point anywhere in this timeline, until last
14 Wednesday, did the plaintiffs say anything about any change
15 in view on the schedule for discovery, anything about a stay
16 motion, nothing.

17 So, Your Honor, we think that the delay in
18 bringing this motion, which could have been brought a year
19 ago, at least the underlying motions to dismiss for subject-
20 matter jurisdiction could have been brought a year ago, that
21 alone warrants an inference that this motion is an attempt to
22 gain a tactical advantage, which is improper.

23 The defendants want to talk about the merits of
24 their motion to dismiss for lack of subject-matter
25 jurisdiction. They cite a lot of cases from New York. I'm

1 not clear why; there's perfectly good cases in Delaware about
2 the standard to issuing a stay of discovery. And those cases
3 expressly say you don't look at the merits of the motion to
4 dismiss.

5 I think there's a good reason for that, right,
6 because if the standard was, well, I've got a really good
7 motion to dismiss, everybody would want a stay of discovery,
8 pending the motion to dismiss, and then the Court is going to
9 be in the position of always trying to sort of predict the
10 outcome of the motion.

11 That's just not what the cases call for. The
12 cases call for an analysis of the prejudice against the
13 moving party -- I'm sorry -- against the non-moving party;
14 the status of the litigation, where it is and where discovery
15 has proceeded; and whether a stay would simplify issues for
16 the trial, which is really about when you're sort of working
17 with multiple litigations and the decision in one would have
18 an effect on the other.

19 So, really, we think what matters here is what's
20 the status of this litigation? What's the status of
21 discovery? And what's the prejudice to the plaintiffs of
22 granting this stay?

23 And, Your Honor, we submit that we would be deeply
24 prejudiced by a stay here, given all the work that we have
25 already done, the amount of discovery that has taken place so

1 far, and from our perspective, if they're right about the
2 scope of discovery, that is a reason to get started, not to
3 delay further.

4 And, you know, the courts expressly say we should
5 not be looking at the underlying merits. We can look at the
6 Petro case, the Cabot (phonetic) case, the Cipla case that we
7 cite in our brief; all of them stand for that proposition.

8 Let me see if there's any other notes from -- Your
9 Honor, unless you have questions for me, I think that's all I
10 have. We would ask that the Court deny the motion, order the
11 defendants to begin producing under the CMO, as they're
12 obligated to do, and to deny any requests for an extension of
13 the carefully negotiated schedule, and to award expenses
14 incurred in responding to this untimely motion.

15 THE COURT: Okay. Thank you.

16 A brief response?

17 MR. GEBHARDT: One thing, Your Honor, that the
18 plaintiffs like to gloss over is who the defendants are.
19 Brandon Williams, while he's a defendant, is not the same as
20 the other three defendants. Brandon Williams was gone from
21 the company in November of 2021; the other defendants stayed
22 with the company and had access to what was going on.
23 Brandon Williams' claim was over at that point.

24 Now, you'll hear about the defendants and they
25 lump Brandon Williams in with everyone else, except there's a

1 complete distinction much the claims against Brandon
2 Williams, particularly in that complaint that was filed,
3 border on the preposterous. The things like saying Brandon
4 Williams was given millions of dollars because he was a
5 personal friend of Samuel Bankman-Fried are ridiculous.

6 All --

7 THE COURT: Well, I don't know that, and you're
8 testifying. I don't know any of that.

9 All I got to go with is what's in the complaint
10 and I've got to accept what's in the complaint as true.

11 MR. GEBHARDT: Well, I understand that, Your
12 Honor, and we certainly will -- we have a motion for summary
13 judgment, which basically negates that.

14 But apart from it, when we negotiated or discussed
15 the case management order, we simply had the complaint. We
16 had a due date of September, which -- in September, like
17 the 25th or something, which was, under the Rules after
18 Brandon Williams was properly served, we were prepared to
19 respond to it. When the discussions went on about a case
20 management order, we planned to file a motion to dismiss for
21 failure to state a claim and it didn't seem worthwhile. We
22 thought staying discovery might be a sensible thing to do.
23 We weren't going -- we didn't argue for it.

24 When the --

25 THE COURT: Did you respond to the -- why didn't

1 you respond to the September 21st letter that they sent to
2 you?

3 MR. GEBHARDT: I don't think I got it.

4 September 21, I'm not even sure we were served then. I mean,
5 we may have been served a letter. Off the top of my head, I
6 can't respond to that at the moment, Your Honor.

7 But the case management order was negotiated
8 principally by the other defendants and their lawyers, with
9 the exception of a couple minor suggestions we may have made.
10 We didn't argue about anything on it. Now --

11 THE COURT: But you agreed to it.

12 MR. GEBHARDT: Well, we agreed to it, yes, because
13 what we saw was a complaint that was facially defective and
14 we believed would not stand on its own.

15 When they asked for things to carry over until the
16 end of October for responses to be filed, we didn't ask for
17 that, but we agreed to it and that's why we raised the
18 summary judgment motion.

19 The question about whether subject-matter
20 jurisdiction should have been known to us, remember, this is
21 an Antiguan corporation. We knew Bankman-Fried had principal
22 ownership, but we didn't know the level of his ownership. We
23 didn't have a copy of the corporate charter, which the other
24 defendants were able to get. We had no knowledge of what the
25 international business corporation law was, nor did we see a

1 need to do that at that time.

2 We saw a defective complaint and we planned to
3 respond to it and then when we got some information, we
4 converted that both, to the motion to dismiss and the motion
5 for summary judgment.

6 THE COURT: Have you been preparing to respond to
7 the discovery requests?

8 MR. GEBHARDT: We filed our response to the
9 motion -- to the document requests. We have documents
10 gathered, yes.

11 If you told us we had to respond next week, we
12 could produce our documents. Brandon Williams has very
13 little documentation on these things. He was out of the
14 company -- out of the organization. He didn't do the
15 negotiating for the purchase and the second transactions.

16 Where we're going to get hurt is, not so much in
17 producing what we have, because it's not that large, but all
18 these documents that supposedly the plaintiffs have, we now
19 have to go through them. We've got to go over them.

20 The other defendants have to produce documents. I
21 haven't seen what they have. All these other things, it's
22 not just what we've got to gather. We've got to go do the
23 reviewing and do the work like that.

24 And, frankly, these plaintiffs say, Well, gee,
25 look at all the work we've done. They're going to have to do

1 a lot of additional work. It's not just that, gee, here's
2 some documents. They're all done. It won't work like that.

3 But we responded. We did what we thought was
4 right when the motion -- the subject-matter jurisdiction
5 motion came up, we looked at it and said there is no way,
6 based on what's been filed, that subject-matter jurisdiction
7 exists in the bankruptcy case or in this court and we're
8 going to join in. And we suggested staying discovery until
9 it's done because it harmed no one and they refused. We
10 filed the motion and we're here.

11 But if the Court says you've got to go forward
12 and, frankly, our motion -- our response to the document
13 requests said if the Court denies the motion for a protective
14 order, we'll produce documents. But we don't get, under the
15 Federal Rules, they don't get to tell us how many days after
16 our 30-day response is filed, we have to give them the
17 documents. They don't get to tell us where we have to give
18 them. We don't have to deliver them to New York, which is
19 what the document request said. We'll work on and arrange --
20 we have an e-discovery person that can exchange the
21 platforms. But wasting money should not be -- it's not in
22 our best interests and it certainly shouldn't be in the best
23 interests of the estate.

24 So we'd ask the Court to grant this limited
25 protective order and keep us all from wasting time, money,

1 and effort, and undue burden and expense in the transaction.
2 Thank you.

3 THE COURT: Thank you.

4 A response from the other defendants?

5 MR. ROSENBLAT: Your Honor, Heath Rosenblat of
6 Morrison Cohen on behalf of Patrick Gruhn, Robin Matzke, and
7 Lorem Ipsum UG.

8 Here, do you want to -- do you have something?

9 THE COURT: Go ahead, Mr. Rosenblat, briefly.

10 MR. ROSENBLAT: Thank you, Your Honor.

11 THE COURT: Well, I don't know why we're switching
12 counsel here on making the argument, but I'll give you like
13 30 seconds.

14 MR. ROSENBLAT: The reason, Your Honor, is because
15 Mr. Keane was not engaged at the time that the CMO was
16 negotiated and I thought there were a few points that could
17 be highlighted for Your Honor. That's all, Your Honor.

18 So very, very quickly. The dates in the CMO and
19 the substantial compliance of January 31 is under Section, I
20 think it's (B) (6) of the CMO, is with respect to the initial
21 requests and that is the first request. I think it's clear
22 that this is going to be a very big case and that there could
23 be a number of requests.

24 So that January date is kind of a false
25 negative -- it's a false positive as to the time frame in

1 which things are going to be produced. As Mr. Keane laid
2 out, fact discovery ends at the end of May and expert
3 discovery is -- May 2024 -- and expert discovery ends in
4 October of 2024. So there still is significant time out
5 there.

6 With response to why, I guess Mr. Ehrenberg said
7 no one replied to his letter. There was complete silence.
8 That's inaccurate and their open papers highlight that at
9 page 55 of 58 in 42-2, which is Mr. Ehrenberg and I had a
10 phone conversation about it. The September 21 letter is
11 pretty much a statement of what they're doing and while
12 they're -- there's a statement at the end of it about what,
13 you know, what's going on, on your end? It really wasn't
14 asking a question of us. It was telling us what we were
15 supposed to do. It didn't need responded to and that is what
16 I told Mr. Ehrenberg in our particular phone call. So it was
17 responded to; it just wasn't responded to in writing.

18 As to the protective order, we submitted a redline
19 to them and are waiting on comments back. It's being
20 negotiated. No deadline in the CMO has been missed.
21 Everything has been complied with.

22 And I just want -- one last point, Your Honor.
23 The emphasis on the one year, and everybody -- this case has
24 been going on for one year. We fully appreciate that and we
25 applaud the herculean effort of Sullivan & Cromwell and what

1 they've done to this date. We were not involved in this
2 matter -- I need to emphasize this -- we were not involved in
3 this matter until July.

4 The defense of subject-matter jurisdiction, as all
5 litigators know, developed organically as we were putting our
6 papers together. There was no looking at this case a year
7 ago. There was July. And as Mr. Keane represented to the
8 Court, the first month and a half was negotiating the CMO and
9 getting things in place like that, and then, once we got into
10 briefing, that's when it developed, Your Honor.

11 Those are the only points I would like to
12 highlight for the Court. Thank you for the opportunity to
13 speak.

14 THE COURT: All right. Thank you.

15 MR. ROSENBLAT: Thank you, Your Honor.

16 THE COURT: All right. I'm going to deny the
17 motion for protective order. I think the CMO was already in
18 place. The parties agreed to it. Discovery has already
19 begun. While documents have not been exchanged, the debtors
20 have indicated that they have undertaken a lot of work in
21 order to respond to discovery requests that were issued by
22 the defendants.

23 The defendants have indicated that they have
24 prepared or are prepared to produce documents in accordance
25 with the case management order and, therefore, I find that

1 there would be prejudice to the debtors, the plaintiffs if
2 they had to stay this.

3 And I also, I agree with the comment that if the
4 discovery is as complex as it's going to be, then it needs to
5 get started now. There's no reason to delay it.

6 All I have in front of me at this point is the
7 motion to dismiss and the brief in support. I haven't seen
8 the response. So even if I had to consider whether the
9 merits of the motion are valid or not, I don't have any basis
10 to do that.

11 So at this point, the motion is denied. I'm not
12 going to award fees or costs, but I will direct the
13 defendants to respond to discovery as set forth in the CMO.
14 If that means you have to produce documents on a rolling
15 basis beginning next week, then do it.

16 Anything else?

17 (No verbal response)

18 THE COURT: The parties should meet and confer and
19 submit a form of order under COC.

20 COUNSEL: Thank you, Your Honor.

21 UNIDENTIFIED SPEAKER: May we be excused, Your
22 Honor?

23 THE COURT: Yes, you may be excused. Thank you.

24 All right. Let's take a short recess before we go
25 to the last item on the agenda and we'll go from there.

1 We'll reconvene at -- let's make it -- let's take
2 a 10 -- well, we've got quite a few people. Let's take --
3 we'll reconvene at 3:30. That clock is wrong.

4 UNIDENTIFIED SPEAKER: It is wrong, Your Honor.

5 THE COURT: Thank you.

6 (Recess taken at 3:10 p.m.)

7 (Proceedings resumed at 3:30 p.m.)

8 THE COURT: Whenever you're ready.

9 MR. KORNFELD: Good afternoon, Your Honor. Alan
10 Kornfeld, Pachulski Stang Ziehl & Jones, for PLS Canada on
11 Number 13. With me at counsel table is my partner James
12 O'Neill.

13 MR. O'NEILL: Good afternoon, Your Honor.

14 MR. KORNFELD: And also at counsel table, Your
15 Honor, I have the pleasure of introducing the Court PLS
16 Canada's founder and present CEO, Dr. Edward Mills.

17 THE COURT: Welcome.

18 MR. KORNFELD: Your Honor, we're happy to do this
19 any way you'd like to do it, but we do have evidence and the
20 evidence, in connection with Motion 13 from PLS Canada's
21 standpoint is Dr. Mills' declaration, which is at Docket 36,
22 and his supplemental declaration, which is at Docket 46, and
23 Exhibits 1 through 10, which are the exhibits that were
24 referenced in connection with the original declaration at
25 Docket 36 and Exhibits A through I, which are attached to the

1 supplemental declaration. All of these exhibits are on the
2 witness and exhibit list that we submitted to the Court.

3 I did have the opportunity to confer with
4 Ms. Wheeler before the hearing and there are no objection to
5 any of those exhibits. I would add, Your Honor, with respect
6 to the exhibits admitted by the debtors in opposition, there
7 are no objections by PLS Canada to those exhibits. So we
8 don't have any evidentiary disputes today.

9 In terms of testimony, we would proffer Dr. Mills'
10 original declaration at Docket 36 and supplemental
11 declaration at Docket 46 as his direct testimony and move
12 those declarations and his exhibits into evidence. He is
13 available for cross-examination and counsel has advised that
14 they wish to cross-examine.

15 THE COURT: Okay. Any objection?

16 MS. WHEELER: No, Your Honor.

17 THE COURT: Okay. The declarations and the
18 exhibits are admitted, without objection.

19 (Mills Declaration received in evidence)

20 (Mills Supplemental Declaration received in evidence)

21 (PLS Canada's Exhibits 1 through 10 received into
22 evidence)

23 (PLS Canada's Exhibits A through I received into
24 evidence)

25 MR. KORNFELD: Your Honor, would you like

1 Dr. Mills to take the stand?

2 THE COURT: Yes, let's go ahead and do the cross
3 and we'll go from there.

4 Dr. Mills, can you please come up, take the stand,
5 and remain standing for the oath.

6 THE CLERK: Please raise your right hand.

7 Please state your full name and spell your last
8 name for the court record, please.

9 MR. MILLS: Edward Joseph Mills, M-i-l-l-s.

10 EDWARD J. MILLS, PLS CANADA'S WITNESS, AFFIRMED

11 THE WITNESS: I do.

12 THE CLERK: You may be seated.

13 Your Honor?

14 THE COURT: You may proceed.

15 MS. WHEELER: Good afternoon, Your Honor.

16 Stephanie Wheeler from Sullivan & Cromwell for the
17 FTX debtor plaintiffs. I apologize, I'm a bit under the
18 weather, so I will try to keep my voice up. I have also
19 lived far too much of my life in New York, so I speak too
20 fast. So please let me know if you need me to slow down.

21 Your Honor, may I approach to hand the Court and
22 Mr. Mills a copy of the binders of exhibits I intend to use
23 on his cross-examination?

24 THE COURT: Yes, please.

25 THE WITNESS: Thank you.

1 THE COURT: Thank you.

2 CROSS-EXAMINATION

3 BY MS. WHEELER:

4 Q Okay. Mr. Mills, if you'll please turn to Tab 1 of the
5 binder. It's a copy of your first declaration, dated
6 September 15th, 2023, that was submitted in support of PLS'
7 motion to dismiss for lack of personal jurisdiction; is that
8 correct?

9 A (No verbal response.)

10 Q You have to verbalize your answer.

11 A Yeah, that's correct.

12 Q Okay. And you may want to move the microphone closer
13 to you. There you go.

14 Okay. Now, in submitting your declaration, you
15 endeavored to make sure that the statements were accurate,
16 correct?

17 A Correct.

18 Q You didn't want to make any misstatements in your
19 declarations submitted to the Court, correct?

20 A That's correct.

21 Q If you turn to page 6 of your declaration, the last
22 page, that's your electronic signature on the declaration; is
23 that right?

24 A It is.

25 Q And you understood that in signing this declaration,

1 you declared under penalty of perjury that to the best of
2 your knowledge, information, and belief, the information in
3 the declaration is true and correct, right?

4 A That's correct.

5 Q Okay. We'll do the same with Exhibit 2, which is your
6 supplemental declaration, dated October 6th, submitted in
7 connection with PLS' reply brief; is that accurate?

8 A That's correct.

9 Q Okay. And as with your first declaration, you
10 endeavored to make sure the statements in the supplemental
11 declaration were accurate, correct?

12 A Correct.

13 Q You didn't want to make any misstatements in your
14 supplemental declaration, correct?

15 A That's correct.

16 Q And on page 10 of Tab 2 of your supplemental
17 declaration is your electronic signature, correct?

18 A That's correct.

19 Q Again, in signing the supplemental declaration, you
20 declared under penalty of perjury that to the best of your
21 knowledge, information, and belief, the foregoing information
22 is true and correct, right?

23 A That's correct.

24 Q Okay. Mr. Mills, I'd like to begin by asking you some
25 questions about the PLS leadership team, okay.

1 If you'll turn to Tab 2, which is your supplemental
2 declaration and go to paragraph 12, please. It's on page 5.
3 In the second sentence, you state:

4 "PLS Canada's leadership team, headed by me and
5 Mr. Zimmerman, until his departure in May 2023, has been
6 based in Canada and includes chief operating officer Dr.
7 Jamie Forrest and CFO Chris Clarke; both of whom are Canadian
8 citizens and residents."

9 Do you see that?

10 A Yes.

11 Q That wasn't the composition of the PLS leadership team
12 as of June 1st, 2023, was it?

13 A No, it was not.

14 Q And that wasn't the composition of the PLS leadership
15 team as of July 19th, 2023, when the complaint was filed?

16 A That's correct.

17 Q Okay. If you'd go to paragraph 13 of your supplemental
18 declaration, just the next paragraph, the parenthetical at
19 the very end of paragraph 13 says:

20 "For example, Bob Battista, Twanna Davis, and
21 Katie Winter do not hold executive leadership positions with
22 the company."

23 Do you see that?

24 A Yes.

25 Q And then staying on paragraph 13, you say in a

1 parenthetical four lines up from the bottom of paragraph 13:

2 "For example, Melissa Bomben is no longer with the
3 company."

4 Correct?

5 A That's correct.

6 Q Is it your testimony that Melissa Bomben did not hold
7 an executive leadership position at PLS during the time that
8 she was at the company?

9 A No, she did.

10 Q Okay. If you'll go to paragraph 10 of your
11 supplemental declaration, the last sentence of paragraph 10
12 says:

13 "He," referring to Dr. Mark Dybul, "is not a
14 member of management or an employee of PLS Canada."

15 Do you see that?

16 A That's correct.

17 Q Okay. Now, I'd like you to turn to Tab 3 of the
18 binder. It's a June 1st, 2023, email attaching a document
19 that you sent to debtors' investment bankers at Perella
20 Weinberg Partners and debtors' counsel at Sullivan &
21 Cromwell.

22 Do you see that?

23 A Yes.

24 Q Okay. In the email at the bottom, Sam Saferstein of
25 Perella Weinberg Partners, the debtors' investment bankers

1 emailed you and Michael Zimmerman, who, until May of 2023,
2 had been the CEO of PLS; is that correct?

3 A That's correct.

4 Q And in the second paragraph of this email,
5 Mr. Saferstein asks for a call to discuss Latona's \$50
6 million investment in PLS and to learn more about PLS,
7 correct?

8 A Correct.

9 Q And in the top email you reply to Mr. Saferstein that
10 you'd be delighted to discuss that with him, and in the last
11 line you say:

12 "I am attaching a deck here that I hope will be
13 helpful to you to learn more about the company."

14 Do you see that, sir?

15 A Yes.

16 Q And if you look at the line and sort of email header,
17 the to/from/CC part of the email where it says "attachments,"
18 are you following me?

19 A Yes.

20 Q Okay. The attachment to your email is entitled "PLS
21 overview June 1, 2023.PDF."

22 Do you see that?

23 A Yes.

24 Q And that attachment, "PLS overview June 1, 2023" is the
25 presentation deck that's the rest of Tab 3; is that correct?

1 A That's correct.

2 Q Okay. So if you turn to page 34 of the presentation
3 deck at Tab 3, page 34 is entitled "leadership team."

4 Is that correct?

5 A That's correct.

6 Q And the logo of PLS is in the upper left-hand corner on
7 that page, correct?

8 A That's correct.

9 Q Now, Bob Battista is listed as a member of the PLS
10 leadership team, correct?

11 A In this slide, yes.

12 Q In this slide.

13 And he was the chief strategy and commercial officer of
14 PLS, correct?

15 A Correct.

16 Q And Bob Battista resides and works in the U.S.,
17 correct?

18 A That's correct.

19 Q Twanna Davis is listed as a member of the PLS
20 leadership team on this slide, correct?

21 A That's correct.

22 Q And she's the chief of clinical operations, correct?

23 A That's correct.

24 Q And Ms. Davis resides and works in the U.S., correct?

25 A That's correct.

1 Q And Melissa Bomben is listed as a member of the PLS
2 leadership team on this slide, correct?

3 A Correct.

4 Q And she was the chief operating officer at the time,
5 correct?

6 A That's correct.

7 Q And she resided in the U.S., correct?

8 A Correct.

9 Q And Mark Dybul is listed as a member of the PLS
10 leadership team on this slide, correct?

11 A Correct.

12 Q And he's the executive chairperson at PLS?

13 A Correct.

14 Q And Mr. Dybul -- sorry -- Dr. Dybul resides and works
15 in the U.S., correct?

16 A Correct.

17 Q And Chris Clarke is not listed as a member of the
18 leadership team on this slide, correct?

19 A Correct.

20 Q And James Forrest is not listed as a member of the
21 leadership team on this slide, correct?

22 A Correct.

23 Q Okay. If you'd turn to Tab 4 of the binder, this is a
24 copy of a PLS press release dated May 23rd, 2023, titled,
25 "Bob Battista joins Platform Life Sciences as EVP, chief

1 strategy and commercial officer."

2 Do you see that?

3 A I see it.

4 Q And the title of the press release says, "Bob Battista
5 is joining as an EVP."

6 That's executive vice president, right?

7 A I presume so.

8 Q Okay. I'd like to direct you to the second paragraph
9 of the press release, the first sentence. There's a quote
10 from you that says:

11 "I've worked with Bob Battista for over a decade
12 and I'm thrilled that he has joined the executive leadership
13 team at PLS, said Dr. Ed Mills, founder and CEO, of Platform
14 Life Sciences."

15 Do you see that?

16 A I do.

17 Q Okay. I'd like you to now turn to Tab 6 of the binder.
18 This is a printout from the "About us" page from the PLS
19 website that was printed on September 26th, 2023. You can
20 see that date in the upper left-hand corner.

21 Do you see that, Mr. Mills?

22 A I do.

23 Q And just to orient you -- sorry -- September 26th,
24 2023, was three days before plaintiffs filed their opposition
25 to PLS' personal jurisdiction motion.

1 Now if you turn to page 3 of 8 and go to the very
2 bottom of the page, you'll see the heading "Our team."

3 Are you with me?

4 A I am.

5 Q Okay. And if you turn to page 4, 5, and 6, it lists
6 six PLS employees who were part of "Our team."

7 Do you see that?

8 A I do.

9 Q And on page 4, Mark Dybul is listed on the "Our team"
10 page of PLS' website as of September 26th, 2023, correct?

11 A Correct.

12 Q And he lives and works in the U.S.?

13 A Yes, he does.

14 Q And Melissa Bomben is listed on the "Our team" page of
15 PLS' website as of September 26th, 2023, correct?

16 A That's correct.

17 Q And she lives in the U.S., correct?

18 A Yes, she does.

19 I'm not exactly sure if she was with us at that time.

20 Q Okay. Bob Battista is listed on the "Our team" page of
21 PLS' website as of September 26th, 2023, correct?

22 A Correct.

23 Q He lives and works in the U.S., correct?

24 A That's correct.

25 Q And Twanna Davis, on page 5 -- 6 -- page 6 is listed on

1 the "Our team" page of PLS' website as of September 26th,
2 correct?

3 A Correct.

4 Q And she lives and works in the U.S., correct?

5 A Correct.

6 Q And finally, on page 6, Katie Winter is listed on the
7 "Our team" page of PLS' website as of September 26th?

8 A Correct.

9 Q And she lives and works in the U.S.?

10 A Correct.

11 Q Now, if you'll turn to Tab 7 of the binder, please,
12 this is a printout of the same "About us" page of the PLS
13 website that we just looked at, at Tab 6, except this version
14 was printed on October 7th, 2023, as you can see in the upper
15 left-hand corner, okay.

16 And to orient you, October 7th, 2023, is the day after
17 you executed your supplemental declaration that we looked at,
18 at Tab 2. Agree?

19 A Correct.

20 Q Okay. If you look at the bottom of page 3 of 7, again,
21 you'll see the "Our team" heading of the PLS website as it
22 existed on October 7th, 2023.

23 Do you see that?

24 A Yes.

25 Q And then on pages 4 and 5, it lists four members of

1 "Our team" as of October 7th, 2023, correct?

2 A Correct.

3 Q So PLS removed Bob Battista from the "Our team" page of
4 its website sometime between September 26th and October 7th,
5 2023, correct?

6 A Correct.

7 Q And PLS removed Twanna Davis from the "Our team" page
8 of its website during the same period of time, correct?

9 A Correct.

10 Q And PLS removed Katie Winter from the "Our team" page
11 of its website during the same period of time, correct?

12 A Correct.

13 Q And Bob Battista, Twanna Davis, and Katie Winter all
14 live and work in the U.S., correct?

15 A Correct.

16 Q And at page 5, PLS added Jamie Forrest to the "Our
17 team" page of its website sometime between September 26th and
18 October 7th, 2023, correct?

19 A Correct.

20 Q And PLS also added Chris Clarke to the "Our team" page
21 of its website during the same period, correct?

22 A Correct.

23 Q And Jamie Forrest and Chris Clarke are both Canadians,
24 correct?

25 A Correct.

1 Q Okay. I'd like to switch gears and turn to the
2 transfers of funds from plaintiffs to PLS. If you'll turn
3 back to Tab 1, which is your original declaration and go to
4 paragraph 10, please, three lines up from the bottom, you
5 state that, "the funds from Plaintiff FTX Trading were from a
6 non-U.S. bank account."

7 Correct?

8 A Correct.

9 Q And if you go to paragraph 13, three lines up from the
10 bottom, again, you state that, "the funds from Plaintiff
11 Alameda were from a non-U.S. bank account."

12 Correct?

13 A Correct.

14 Q And in paragraph 15, you state three lines up from the
15 bottom that the funds from Plaintiff Alameda were from a U.S.
16 bank account, correct?

17 A It must be.

18 Q Okay. Mr. Mills, are you aware that the plaintiffs
19 included in their opposition papers, evidence that each of
20 these transfers originated from a plaintiff bank account
21 located in the U.S.?

22 A I was not.

23 Q But you're aware of that now?

24 A You just told me.

25 Q Okay. Well, did you not see plaintiffs' papers?

1 A I did, but I'm not aware.

2 Q Let me ask it a different way.

3 As you sit here today, Mr. Mills, you don't have any
4 basis to dispute that the transfers were, in fact, from bank
5 accounts of plaintiffs that were located in the United
6 States?

7 A As I sit here today, it has not been my knowledge and I
8 am not aware that that occurred.

9 Q That that occurred, meaning that the money came from --

10 A That the money came from a --

11 Q -- a U.S. bank account?

12 A -- U.S. bank account.

13 Q You don't know where the money came from is what you're
14 saying?

15 A I was not CEO at the time.

16 Q Okay. You don't dispute that each of the transfers to
17 PLS was in U.S. dollars, correct?

18 A Correct.

19 Q Okay. If you turn to Tab 2 of your supplemental
20 declaration and go to paragraph 4, please, the very last
21 sentence of paragraph 4 says:

22 "PLS [sic] had no hand in directing the process by
23 which the funds flowed into its Canadian bank."

24 Do you see that, sir?

25 A I do.

1 Q And if you go to Tab 9, please, the top email, it's an
2 email from you to an FTX group employee on January 31st,
3 2022.

4 Do you see that?

5 A I do.

6 Q And if you turn to the third page of Tab 9, you
7 attached to your email an invoice for a \$3.25 million
8 philanthropic gift from FTX Trading to PLS, correct?

9 A Possible. I'm not sure.

10 Q What part about that are you not sure about?

11 A No, it must be.

12 Yes, that would be correct.

13 Q Okay. At the bottom of the invoice, you included wire
14 instructions for the transfer from FTX Trading to PLS,
15 correct?

16 A Correct.

17 Q You don't dispute that you sent plaintiffs wire
18 instructions directing plaintiffs to send U.S. dollar
19 transfers through Wells Fargo as a correspondent bank,
20 correct?

21 A I do not dispute that.

22 Q Okay. If you turn to Tab 10 of the binder, please,
23 this is a February 3rd, 2022, email that you sent to the same
24 FTX group employee, three days after you sent the wire
25 instructions we just looked at.

1 Agreed?

2 A Agreed.

3 Q And in this email, you ask the FTX group employee to
4 let you know when the wire transfer is made for the invoice,
5 correct?

6 A Correct.

7 Q And that's because, in your experience, sometimes these
8 transfers get stuck in U.S.-Canadian banking system and don't
9 arrive until you inquire, correct?

10 A Correct.

11 Q So you don't dispute that you knew that the transfers
12 from plaintiffs to PLS were going through the U.S. banking
13 system, correct?

14 A No, I do.

15 Perhaps, I did not understand it, but I was under the
16 impression that this was coming from a Caribbean bank account
17 and CIBC has Caribbean -- a Caribbean bank called First
18 Caribbean -- "CIBC First Caribbean" is the name of it. So I
19 was under the impression that was the case.

20 I simply did a cut-and-paste from the information that
21 was given to me by my banker and then the invoice would have
22 been prepared by somebody else.

23 MS. WHEELER: Mr. Mills can we get his
24 declaration, his supplemental declaration, please?

25 (Counsel confers)

1 MS. WHEELER: Do you have it? Do you have his
2 supplemental declaration?

3 MR. KORNFELD: We do, thank you.

4 MS. WHEELER: May I approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you.

8 BY MS. WHEELER:

9 Q Exhibit A to your supplemental declaration are the wire
10 instructions from CIBC that you attached.

11 Do you recall that?

12 A I don't recall, no.

13 Q Well, could you look and find Exhibit A. I apologize
14 that it does not have tabs.

15 A Sure.

16 Q It would be the first exhibit after your signature
17 page, I presume.

18 A Okay.

19 Q Okay. So attached to your supplemental declaration are
20 the wire instructions from CIBC.

21 Do you recall that?

22 A I don't recall it. I didn't prepare it.

23 Q But you signed it?

24 A I signed it.

25 Q Okay. And on the second page of the CIBC wire

1 instructions it says about a third of the way down the page:

2 "If you are receiving funds in USD currency from
3 the U.S., please use Wells Fargo as an intermediary bank."

4 Do you see that, sir?

5 A I do.

6 Q So if the funds were coming from a Caribbean bank in
7 the Caribbean, these would not be the wire instructions?

8 A That may be.

9 Q I'm going to switch gears again and ask you to go back
10 to Tab 2, which is your supplemental, and I'll direct you to
11 paragraph 6. In the third line down from the top, you say:

12 "The draft presentation on which this allegation
13 is based reflects PLS Canada's existing business and ideas
14 for future business, including its hopes for future expansion
15 into the U.S."

16 Do you see that?

17 A I do.

18 Q And the draft presentation that you're referring to
19 there is the June 21st, 2023, presentation deck that you sent
20 to the debtors' investment bankers, which is attached at
21 Tab 3 of your binder, correct?

22 A Correct.

23 Q And if you turn to Tab 3 and look at the June 1st,
24 2023, email that covers the presentation deck, in your email
25 at the top to the investment bankers, you say:

1 "I'm attaching a deck here that I hope will be
2 helpful for you to learn more about the company."

3 Correct?

4 A Correct.

5 Q You don't say in your email that the attachment is a
6 draft presentation, correct?

7 A Well, we discussed it.

8 Q It doesn't say it in your email that it's a draft?

9 A It's not in the email.

10 Q And the presentation itself does not have the word
11 "draft" on it, correct?

12 A It appears not to. I did not prepare it.

13 Q And you don't say anywhere in the email that the
14 presentation contains inaccurate information, do you?

15 A I think we discussed that on the phone with them when
16 we had a subsequent phone call.

17 Q But your email doesn't say that?

18 A That's correct.

19 Q And your email doesn't say that the presentation
20 contains PLS' ideas for future business, does it?

21 A The email does not.

22 Q And the email doesn't say that the presentation
23 contains PLS' hopes for future expansion into the U.S., does
24 it?

25 A It does not.

1 Q If you flip back to Tab 2, which is your supplemental
2 declaration, please, and refer to paragraph 6 again, the
3 second and third sentences of paragraph 6 state:

4 "The plaintiffs incorrectly allege that PLS Canada
5 operates 83 clinical trial sites in the U.S., including in
6 collaboration with CVS. It does not."

7 Do you see that, sir?

8 A I do.

9 Q Now, if you'll turn back to Tab 3, which is the June
10 2023 preparation deck, I'd like you to focus on page 5 of the
11 presentation deck.

12 A Yes, I'm familiar with that.

13 Q On the left-hand side of the page where the United
14 States is on the map, the presentation says, "U.S.: 83 sites,
15 plus CVS trial sites."

16 Do you see that?

17 A Yes.

18 It should have said "83 plus CVS sites."

19 Q Plus, okay. I'll take that.

20 83 is a very specific number, wouldn't you agree,
21 Mr. Mills?

22 A I agree.

23 Q The presentation doesn't say, "83 planned sites," does
24 it?

25 A No, but I'll be happy to explain it to you.

1 Q The presentation doesn't say, "PLS hopes to have 83
2 sites in the U.S. in the future," does it?

3 A No.

4 Q If you turn back to Tab 2 of your supplemental
5 declaration and refer to paragraph 6, again, there's a long
6 website that takes up an entire line about halfway down
7 paragraph 6. The sentence after that very long website
8 reads:

9 "PLS Canada has never had a business affiliation
10 with CVS or the potential experts and access sites in the
11 U.S. identified in the draft presentation."

12 Do you see that?

13 A I do.

14 Q And if you turn back to Tab 3, which is the
15 presentation, and go to page 6, please.

16 A Okay.

17 Q The upper right-hand corner, the presentation says,
18 "Experts and site access," correct?

19 A Uh-huh.

20 Q And page 6 identifies in turquoise blue, by name,
21 certain universities, U.S. Government agencies, and hospitals
22 in the U.S., doesn't it?

23 A I'm sorry, I can't read it.

24 Q I'll read it to you.

25 University of Virginia. That's in the U.S., right?

1 A It is.

2 Q Tufts University is in the U.S.? Boston University is
3 in the U.S.? NIH is in the U.S.? Yes?

4 A Yep.

5 Q Okay. UNICEF is in the U.S.? University of Maryland?
6 I could go on. There are 23 that we list in our brief.
7 So this page lists certain universities, hospitals, and
8 government agencies in the United States, right?

9 A I do understand where this figure came from.

10 Q This page doesn't say "potential experts and access
11 sites," does it?

12 A Well, when you give a presentation to someone, you
13 usually, also narrate what the meaning of the figures are.

14 Q Okay. This page doesn't say, "future experts and
15 access sites," does it?

16 A It reflects people we have co-authored articles with.

17 Q I'd like to turn now to the subject of PLS'
18 incorporation of a Delaware entity.

19 The Delaware entity was incorporated with exactly the
20 same name as the Canadian entity, right?

21 A You're telling me.

22 Q You don't know that?

23 A I wasn't CEO at the time.

24 Q You had no involvement in the incorporation of the
25 Delaware entity whatsoever?

1 A I'm sure it was discussed with me, but I was not a
2 decision-maker.

3 Q All right. If you turn to Tab 1, your first
4 declaration, and refer to paragraph 7, please, you say in the
5 first sentence:

6 "PLS Delaware was incorporated for the sole and
7 exclusive purpose of processing payroll, and providing
8 benefits to, the employees of PLS Canada that work remotely
9 from the U.S."

10 Do you see that?

11 A I do.

12 Q And are you aware, Mr. Mills, that in your opposition
13 papers, plaintiffs included an email from a Latona person
14 requesting whether Latona should require PLS incorporate in
15 Delaware?

16 A I am.

17 Q Okay. If you then turn to Tab 11 of the binder, this
18 is an email that you sent to Ross Rheingans-Yoo of Latona on
19 April 4th, 2022, four days after the Delaware entity was
20 incorporated on March 31st, 2022, correct?

21 A Correct.

22 Q And the subject line of the email you sent reads,
23 "Delaware, Inc."

24 A Correct?

25 A Correct.

1 Q And in the email you inform Ross Rheingans-Yoo of
2 Latona that, quote:

3 "We have now incorporated in Delaware and have all
4 the necessary registrations. Could you advise on how to
5 proceed."

6 A Correct.

7 Q If you turn back to Tab 2, which is your supplemental
8 declaration and refer to paragraph 7, please, the second
9 sentence of paragraph 7, you now state in your supplemental
10 declaration that:

11 "PLS Delaware was formed in March 2022, around the
12 same time as the transactions, at Latona's request."

13 Do you see that?

14 A I do.

15 Q Okay. I want to switch topics again and talk about the
16 David Sackett Award for the Clinical Trial of the Year for
17 the TOGETHER Trial.

18 A Happily.

19 Q Okay. If you could -- I think we're still on Tab 2.
20 We are. So if you go to paragraph 18 of your supplemental
21 declaration, the first two sentences, you state:

22 "The plaintiffs are also incorrect in their
23 assertion that I traveled to the U.S. in May 2022 on behalf
24 of PLS Canada. To clarify, I traveled to the U.S. to receive
25 an award from the Society of Clinical Trials for McMaster

1 University's work on the TOGETHER Trial."

2 Do you see that?

3 A I do.

4 Q And the award that you're referring to in those
5 sentences is the David Sackett Award for the Clinical Trial
6 of the Year for the TOGETHER Trial, correct?

7 A Correct.

8 Q Now, later in paragraph 18, six lines down from the
9 top, you say:

10 "PLS Canada itself was not part of the initial
11 TOGETHER Trial."

12 Do you see that?

13 A I do.

14 Q Okay. If you turn back to Tab 1, which is your first
15 declaration, and referring to paragraph 5, please, the second
16 sentence of paragraph 5 says:

17 "In May 2023, PLS Canada was awarded the Clinical
18 Trial of the Year for its accelerated clinical trial work and
19 cost-effective approaches to drug evaluations and efficacy."

20 Do you see that?

21 A I do.

22 Q And if you turn to Tab 12, please, this is a May 24th,
23 2023, PLS press release entitled, "Purpose Life Sciences
24 celebrates prestigious David Sackett Trial of the Year Award
25 win in 2022, extends congratulations to new awardee."

1 Do you see that?

2 A I do.

3 Q And if you look at the first full paragraph that's not
4 in italics, the first sentence reads:

5 "Purpose Life Sciences, a global impact research
6 organization, is delighted to announce that it was honored
7 with the esteemed David Sackett Trial of the Year Award in
8 2022 by the Society for Clinical Trials."

9 Do you see that?

10 A I do.

11 Q In the next paragraph, the first says reads:

12 "The David Sackett annual Trial of the Year Award
13 was given to Platform Life Sciences in 2022 for its
14 outstanding contributions to the 2021 TOGETHER Trial."

15 Do you see that?

16 A I do.

17 Q And if you go to the top of page 2, Mr. Mills, you're
18 quoted as saying, quote:

19 "In winning the 2022 David Sackett Trial of the
20 Year Award, we're humbled and grateful to have been chosen
21 from a pool of highly accomplished contenders and we extend
22 our deepest appreciation to the judges and the Society for
23 Clinical Trials for this remarkable honor, said Dr. Ed Mills,
24 founder and CEO of Purpose Life Sciences."

25 Do you see that?

1 A I do.

2 Q And if you go to Tab 4, which is the press release that
3 we looked at earlier, announcing the hiring the Bob Battista,
4 if you look at the very last sentence of the press release,
5 which begins at the bottom of page 2 and carries over to the
6 top of page 3, it reads:

7 "Platform Life Sciences designed and implemented
8 an innovative, adaptive platform trial called the TOGETHER
9 Trial, receiving global recognition, including the 2021,
10 awarded in 2022, David Sackett Trial of the Year Award by the
11 Society for Clinical Trials."

12 Do you see that?

13 A I do.

14 Q Okay. Last subject, Mr. Mills.

15 If you go back to Exhibit -- or sorry, Tab 2, your
16 supplemental declaration and go to paragraph 15, please, it
17 starts at the bottom of page 5 and carries over to page 6. I
18 want to go to page 6 and it's five lines down from the top.

19 There's a sentence that starts, "I have not, to date."
20 Everybody with me? You with me, Mr. Mills?

21 A Yes.

22 Q Okay.

23 "I have not to date been active as a senior
24 scientist with VirX@Stanford, which is a global pandemic
25 response initiative made up of academic from all over the

1 world. It is not a position at Stanford University in Palo
2 Alto."

3 Do you see that?

4 A I do.

5 Q Okay. So I'd like you to turn to Tab 1, which is your
6 first declaration and refer to paragraph 1 on page 2. Seven
7 lines down from the top, it says -- you state:

8 "I am also a senior scientist at VirX@Stanford,
9 developing new antiviral agents."

10 Do you see that?

11 A I do.

12 Q And if you go to Tab 3, which is the June 1st deck, and
13 turn to page 35, please, underneath the picture of you on the
14 left-hand side, this second entry says, "Senior scientist,
15 Stanford University."

16 Do you see that?

17 A I do.

18 Q And if you go to Tab 13, this is your LinkedIn profile,
19 Mr. Mills?

20 A Uh-huh.

21 Q At the bottom of page 1, under the heading
22 "Experience," the first entry reads:

23 "Senior scientist, VirX@Stanford, June 2022
24 through present, Stanford, California, United States."

25 Do you see that?

1 A I do.

2 MS. WHEELER: I have no further questions.

3 THE COURT: Thank you.

4 Redirect or anybody else wish to cross, I should
5 ask?

6 (No verbal response)

7 THE COURT: Okay. Redirect?

8 MR. KORNFELD: Thank you, Your Honor.

9 (Pause)

10 MR. KORNFELD: Your Honor, we have some exhibits.
11 They may be repetitive, so I'll try to stay with what counsel
12 already used. But in the interests of not interrupting the
13 flow of the redirect, may we distribute them?

14 THE COURT: Yes.

15 MR. KORNFELD: They are exhibits that are on our
16 list.

17 THE COURT: In the event of future hearings, I
18 prefer the exhibits be provided in electronic binders so I
19 can just bring it up on my screen, rather than having piles
20 of documents up here.

21 MR. KORNFELD: We did that, too.

22 THE COURT: Okay. Well, if you have it, I can
23 open that up.

24 MR. KORNFELD: Yeah, they're all exhibits that you
25 have on your electronic screen, Your Honor.

1 THE COURT: All right. As long as you've got it,
2 I'll take it.

3 MR. KORNFELD: Okay.

4 May I proceed?

5 THE COURT: Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. KORNFELD:

8 Q Counsel called you "Mr. Mills."

9 Do you have a doctorate degree?

10 A I do.

11 Q Can you tell the Court what that degree is?

12 A It's in clinical epidemiology.

13 Q From what university?

14 A From McMaster University.

15 Q Are you a university professor, Dr. Mills?

16 A I'm a full professor.

17 Q Where are you a university professor?

18 A At McMaster University.

19 Q Are you affiliated with any other universities?

20 A I am affiliated with the University of Rwanda and that
21 is the only thing I've signed a contract on.

22 Q So let's talk about VirX@Stanford.

23 A Are you employed by Stanford University?

24 Q No.

25 Q So what is your affiliation with VirX@Stanford?

1 A So VirX@Stanford was an international collaboration of
2 people all working on antiviral agents and it was a way for
3 those collaborators to communicate with one another.
4 It has, unfortunately, not turned into much; although, it
5 sounds like it's an impressive institution, they haven't even
6 had a single meeting yet.

7 Q Have you done anything for VirX@Stanford?

8 A No.

9 Q Has PLS ever been affiliated with VirX@Stanford?

10 A No.

11 Q Has PLS ever done a clinical trial for VirX@Stanford?

12 A No.

13 Q Has PLS ever entered into any contracts with
14 VirX@Stanford?

15 A No.

16 Q Counsel asked you a series of questions about the
17 TOGETHER Trial.

18 What was your personal involvement in the TOGETHER
19 Trial?

20 A So my personal involvement was in 2020 at the beginning
21 of the pandemic, I had been involved in multiple clinical
22 trials around the world and at some point, I realized they
23 were all quite deficient in their aim to do outpatient of
24 COVID and so I put together what is called an "adaptive
25 platform trial." It's a very unique type of clinical trial

1 where you can evaluate multiple interventions at the same
2 time.

3 This would be unusual for you to see, but you might be
4 familiar with the Oxford University RECOVERY Trial. The
5 reason we know that dexamethasone saves lives, that's a
6 similar kind of trial. And, interestingly, in 2021, they won
7 the Clinical Trial of the Year. We won the 2022 for using a
8 similar design, but we were using outpatient treatment.

9 Q In 2020 was there a PLS Canada?

10 A No, there was not.

11 Q Was there any PLS?

12 A (Inaudible.)

13 Q You're shaking your head.

14 You have to answer out loud.

15 A No, there was not.

16 Q You were nice enough to give credit to PLS for the work
17 on the TOGETHER Trial.

18 Why did you do that?

19 A Well, midway through the trial, we became PLS because
20 we had multiple funders who were coming forward and we
21 thought that we might be able to engage biotechs also that
22 would put interventions and money into evaluating different
23 interventions for COVID.

24 THE COURT: Can you pull the microphone -- I'm
25 having a hard time hearing you. I want to make sure we pick

1 you up on the recording.

2 THE WITNESS: Sure. I'm sorry about that.

3 So PLS was incorporated, I think, in 2021 at some
4 point. I had begun the trial at McMaster University, where I
5 hold my academic position. And at some point, we realized
6 that the University didn't want to continue doing the trial
7 because there wasn't much overhead for them. Unfortunately,
8 that's the way that universities work.

9 And so we were interested in moving as quickly as
10 we could so that we could evaluate multiple interventions in
11 the trial and that was done mostly as a company, as a
12 commercial entity, and that's the reason we established PLS.

13 BY MR. KORNFELD:

14 Q Was that TOGETHER Trial done in the United States?

15 A No, not a single patient was ever recruited there.

16 Q Where was the TOGETHER Trial done?

17 A Predominantly in Brazil and Canada and, subsequently, a
18 little bit in South Africa.

19 Q And as long as we're talking about trials done in the
20 United States, has PLS Canada ever done a single trial in the
21 United States?

22 A No, we have not.

23 Q Has PLS Canada ever done any business whatsoever in the
24 United States?

25 A Yes, we have.

1 Q What was that business?

2 A We engaged with two companies to do clinical trials
3 outside of the United States. One was a company called
4 "Eiger," where we had done a clinical trial in Brazil and
5 they gave a small amount of money to finish up that clinical
6 trial. And another one was called "GreenLight Bio," where we
7 were doing a trial for them in Rwanda and, subsequently, that
8 trial never occurred.

9 Q Other than those two transactions, has PLS ever done a
10 transaction with U.S. companies?

11 A No.

12 Q I'm going in reverse order than what counsel did, but
13 it seems to make sense.

14 Counsel asked you about a Delaware entity, which has
15 also been sued and that's PLS Delaware. What does PLS
16 Delaware do?

17 A PLS Delaware doesn't do a lot, but it manages the
18 salaries of the eight employees who are U.S.-based and covers
19 somehow paying their health insurance.

20 Q Does PLS Delaware do anything else?

21 A It does not.

22 Q Now, counsel showed you a series of emails where there
23 was a discussion of forming PLS Delaware. It sounded like to
24 do more than that.

25 What happened?

1 A Well, I wasn't CEO at the time, but I think that you're
2 referring to the communication with Ross Rheingans-Yoo. We
3 had a communication with him. He was not sure. He
4 represented Latona and the lawyer for Latona happened to be a
5 Canadian and said, No, actually, we'd rather do this deal in
6 British Columbia.

7 Q And by "this deal," what are you referring to?

8 A Oh, sorry.

9 The investment and service contract.

10 Q And that was the investment and service contract with
11 Latona --

12 A With Latona and PLS Canada.

13 Q Was that the investment and service contract, just to
14 put a pin in it, that was funded you discovered, by FTX
15 Trading and Alameda Trading?

16 A I believe so.

17 Q So you remember counsel's sort of longer series of
18 questions about what has been marked as Exhibit 3, which is
19 the draft presentation that you sent to Mr. Saferstein at
20 Perella Weinberg.

21 Can you describe the circumstances that led you to send
22 that draft presentation to Mr. Saferstein?

23 A Certainly.

24 I received an email from Mr. Saferstein indicating he
25 wanted to talk about the company. That they were with

1 Perella -- some company I was unfamiliar with -- and he
2 requested a discussion. The CEO, at the time, advised that I
3 send the slide deck to him.

4 The slide deck is an aspirational slide deck that, you
5 know, any company utilizes to see, you know, potentially,
6 what our narrative is on what the future of the company looks
7 like.

8 Q So counsel asked you questions about the slide deck not
9 having the word "draft" on it and you wanted to explain why
10 it didn't have the word "draft" on it and you weren't given
11 that opportunity.

12 Would you explain to the judge now why Exhibit 3, the
13 draft presentation, doesn't have the word "draft" on it and
14 the conversations that you had with Perella Weinberg
15 regarding that exhibit.

16 A Certainly.

17 Well, you know, every company keeps some sort of slide
18 deck about what their aspirations are. Some of it has
19 been -- you know, some of it is how we currently are and some
20 of it is how we'd like to project ourselves. But that slide
21 deck was never for public consumption. And when we discussed
22 it with them, we also discussed that this was without
23 prejudice.

24 Q You said it was never for public consumption.

25 Did that slide deck go to anybody, other than the

1 investment bankers at Perella Weinberg?

2 A Not to my knowledge.

3 Q The slide deck talks about 83 clinical trial sites in
4 the United States.

5 Were there 83 clinical trial sites in the United
6 States?

7 A No, we do not have 83 -- we don't have any clinical
8 trial sites.

9 Q Was there ever PLS' history, a single trial site in the
10 United States?

11 A No.

12 Q When you were talking to Mr. Saferstein, did you
13 explain to him that this is an aspirational slide deck, that
14 we really don't have a single site in the United States?

15 A Well, it was a very strange phone call, because we had
16 several people from his team, but they were all calling in
17 from, I think, Grand Central Station or somewhere on their
18 way home, so it wasn't a highly organized phone call.

19 Q It could have been from Delaware. Who knows?

20 A Right.

21 Q And you said it wasn't a highly organized call.

22 Q Was it only one call about that presentation?

23 A Only one call.

24 Q Was that ever -- did that presentation ever become, in
25 any way, a reality?

1 A Some elements of that are a reality.

2 Within a very short period of time, the 83 sites that
3 that's referring to, which is, that's CVS -- CVS decided --
4 CVS is open, just as anybody here is welcome to approach --
5 at the time, was welcome to approach CVS and ask about access
6 to 83 clinical trial sites. They subsequently closed it very
7 shortly after that. They said there's no component of their
8 company that could currently run the trials.

9 Q So they never had one of your trial sites, if I
10 understood you?

11 A That's correct.

12 Q And they never ended up doing trial sites?

13 A No.

14 Q Counsel asked you questions about all of the academics
15 that are referenced in that draft presentation; all of the
16 academics, of course, being American academics, as she read
17 them to you.

18 Do you recall that testimony?

19 A Yes.

20 Q What were you referring to on that page of the draft
21 deck?

22 A So in our industry, in clinical medicine and clinical
23 research, your expertise and, in particular, publications
24 have value. They demonstrate that you can complete a
25 project.

1 So I've been fortunate enough to work with some of the
2 leading academics in the world and that particular figure
3 reflects a network of all the core scientists within our team
4 and people that they have collaborated with. So it
5 illustrates the network of academics that we would have
6 access to.

7 Q But you didn't enter into contracts with those
8 academics, did you?

9 A No.

10 Q You said in your world of clinical trials, your world
11 of science and attempting to bring cures to disease,
12 publishing in journals is important.

13 Why is that?

14 A So there -- it's a very important component of
15 advancing intellectual knowledge and access to scientific
16 information. So it would be considered unethical to not
17 publish if you've done original research.

18 Q Why would that be unethical?

19 A We do research to save lives. We do research to
20 benefit the lives of those who are more misfortunate. And
21 covering up findings, which, of course, happens within the
22 commercial industry, does happen.

23 Within the environment and collaborators that I have,
24 that would not be permissible.

25 Q How many times have you personally published in

1 recognized scientific and medical journals?

2 A I don't keep an exact track of it, but I'm one of the
3 most published scientists in Canada, so at least 550
4 publications.

5 Q Has PLS as a company ever published an article in any
6 journal, whether it be an American journal or any other
7 journal?

8 A Not for the purpose of PLS Canada, no.

9 Q What do you mean by that?

10 A I mean that, as I mentioned, credibility and
11 demonstrating non-bias and, you know, being entirely
12 transparent is important. So you will always -- you know,
13 these are individuals who publish. You know, just because
14 you're from a company, do you get the right to publish.
15 Individuals must contribute in a meaningful way and then they
16 must disclose any conflicts that they might have, such as
17 taking a salary from a company like PLS.

18 Q Have you published during your academic career in
19 American journals?

20 A Of course.

21 Q Have you published in British journals?

22 A Yes.

23 Q Have you published in journals that are published
24 throughout the world?

25 A Of course, yeah.

1 Q Did you list some of those in your supplemental
2 declaration for the Court to review?

3 A I did.

4 Q Counsel asked you about the Wells Fargo correspondent
5 account that CIBC uses for its dollar transfers. Let me ask
6 you a couple of questions about that.

7 Is that a special account that Wells Fargo only uses
8 for PLS?

9 A I don't know. I have no familiarity with it.

10 Q And did PLS tell Wells Fargo that -- I'm sorry, did PLS
11 tell CIBC that CIBC had to use Wells Fargo as a conduit in
12 order to receive the dollar transfers from FTX and Alameda?

13 A No, it did not.

14 Q Did PLS have any control of how CIBC receives dollar
15 transfers from anybody?

16 A No, we have no control.

17 Q And when you gave wire instructions to Mr. Rheingans-
18 Yoo on behalf of Latona, did you simply cut and paste the
19 wire-transfer instructions for the CIBC website and then
20 forward those to Mr. Rheingans-Yoo?

21 A Something like that, yeah.

22 Q Does PLS have an account at an American bank?

23 A It does.

24 Q What is that account?

25 A Chase Bank.

1 Q And what is that account used for?

2 A Oh, I'm sorry, did you say PLS --

3 Q Well, okay. So let's -- I confused you, so I
4 apologize.

5 Does PLS Delaware have an account at an American bank?

6 A Yes, it does.

7 Q What is that account used for?

8 A For transfer of payments of salaries and benefits --

9 Q Is --

10 A -- to employees.

11 Q To the PLS Canada employees that are in the U.S.?

12 A That's correct.

13 Q Does PLS Delaware use that Chase account for anything
14 else, other than to pay employees?

15 A No.

16 Q Does PLS Canada have an account at an American bank?

17 A No.

18 Q You were asked a lot of questions about the team and
19 the evolution of the leadership team at various times at the
20 company. Let's -- we're going to get to that in one minute,
21 but let's first focus on PLS as an entity, not the
22 individuals that work for it.

23 PLS, as an entity, ever done anything in America?

24 A Yes.

25 Q What has it done?

1 A PLS, as an entity, picked up the award for Clinical
2 Trial of the Year, where I attended and some staff attended
3 conferences.

4 Q Other than that?

5 A No.

6 Q In terms of Mr. Battista, Ms. Davis, Ms. Winter, people
7 who, at various times, were listed as being part of your
8 leadership, did they try to develop business in the United
9 States?

10 A I'm sure that they did, so yes.

11 Q Did they ever obtain any business in the United States?

12 A With the exception of -- no, those individuals. No,
13 they never did.

14 Q And you were going to say with the exception -- you
15 previously testified there were two funding transactions over
16 PLS' history that were used to fund trials that were done in
17 Brazil, if I recall?

18 A Brazil and Rwanda, Eiger and GreenLight.

19 Q So what do these American remote employees do for PLS
20 Canada?

21 A At the moment, they predominantly help with building
22 education for an initiative we are leading through Africa,
23 and so their entire focus is on Africa.

24 Q Does PLS have employees in places other than Canada and
25 the United States?

1 A Yes.

2 Q Where are those employees?

3 A In Rwanda, Nigeria, Kenya, South Africa.

4 Q Approximately how many PLS employees work in Africa?

5 A Approximately 20.

6 Q Approximately how many employees does PLS have?

7 A Approximately 59.

8 Q Was Mr. Battista and Ms. Davis and Ms. Winter ever C-
9 suite leaders for PLS?

10 A No.

11 Q Who were the C-suite leaders over time?

12 A Over time, it arguably has been Dr. Jamie Forrest;
13 currently, Mr. Chris Clarke; previously, Melissa Bomben;
14 Michael Zimmerman; and myself.

15 Q How long did Ms. Bomben work for PLS Canada?

16 A Approximately three months.

17 Q Why so short?

18 A I believe she was taking the company in the wrong
19 direction.

20 Q Have any of those American employees of PLS ever done
21 an American clinical trial for PLS?

22 A No.

23 MR. KORNFELD: Your Honor, may I have a moment?

24 THE COURT: Sure.

25 (Pause)

1 MR. KORNFELD: Thank you, Your Honor.

2 No further questions at this time.

3 THE COURT: Okay. Thank you.

4 I have a couple questions, Dr. Mills.

5 When you conduct clinical trials outside the
6 United States, do you use U.S. Food and Drug Administration
7 rules and regulations to conduct those trials?

8 THE WITNESS: Thank you, Your Honor. I love that
9 question.

10 There are international standards and the U.S. FDA
11 is one of about eight different countries that have agreed to
12 share in those standards. And for the trials in Brazil, for
13 example, they have their own FDA that you must pass the
14 regulations for.

15 In order to meet the FDA regulations, quality of
16 clinical care, it will be dependent on whether or not you're
17 trying a new drug for the purpose of registration of a new
18 drug or you can also do repurposing of drugs, which, just
19 imagine, you're using aspirin, for example, for some
20 condition. If aspirin is already been available in that
21 particular country, then you don't need to get the equivalent
22 of FDA approval.

23 In Africa, they've just begun the African
24 Medicines Agency, which will be the FDA equivalent for
25 Africa.

1 THE COURT: And the U.S. Delaware entity, you say
2 that they pay the salaries of employees and the health
3 insurance.

4 Do they also pay the payroll taxes for those
5 employees?

6 THE WITNESS: Yes.

7 THE COURT: And how does -- in your declaration,
8 you indicate that PLS Delaware has no operations, no income,
9 it doesn't produce anything. It has no employees.

10 So where does the money come from to pay those
11 employees?

12 THE WITNESS: It gets transferred from PLS Canada.

13 THE COURT: So it goes from a Canadian bank to the
14 U.S. bank?

15 THE WITNESS: That's correct.

16 THE COURT: Okay. Thank you.

17 I will -- I asked some questions, so I'll open it
18 up to the parties if they want to follow up on that.

19 MS. WHEELER: Nothing further from (inaudible).

20 MR. KORNFELD: Nothing further, Your Honor.

21 THE COURT: Okay. Thank you.

22 Thank you, Dr. Mills. You may step down.

23 THE WITNESS: Thank you.

24 (Witness excused)

25 MR. KORNFELD: Your Honor, PLS Canada rests.

1 THE COURT: Okay. Thank you.

2 MS. WHEELER: Your Honor, given the very late
3 hour, I want to make a couple very quick legal points.
4 First, because there's been no jurisdictional discovery,
5 plaintiffs need only make a *prima facie* showing of personal
6 jurisdiction over PLS based on competent evidence and we
7 believe we've done that with the 66 exhibits attached to
8 Mr. McGuire's declaration.

9 Second, in deciding the motion to dismiss for
10 personal jurisdiction, the Court considers PLS' contacts at
11 the time the complaint is filed or within a short period of
12 time before that. And this point wasn't briefed, Your Honor,
13 so I can give you authorities on that.

14 THE COURT: Well, I think we're getting into
15 argument and it's their motion, so --

16 MS. WHEELER: Oh, sorry.

17 I thought he rested, meaning he wasn't going to
18 argue the motion.

19 THE COURT: No further evidence, I think, is what
20 he was saying.

21 MR. KORNFELD: No, I -- no further evidence.

22 MS. WHEELER: Oh, I apologize. I apologize. I
23 was getting ahead of myself. Sorry.

24 THE COURT: Do you have any evidence?

25 MS. WHEELER: No.

1 THE COURT: Okay. So --

2 MS. WHEELER: Just, Your Honor, we've already, I
3 guess, moved in the declaration of McGuire?

4 MR. KORNFELD: No, I don't think you did,
5 actually.

6 MS. WHEELER: Well, I thought you did for me, but
7 I'm happy to do it if you don't think you --

8 THE COURT: Why don't we --

9 MR. KORNFELD: I indicated there were no
10 objections.

11 THE COURT: Why don't we do it just to make sure?

12 MS. WHEELER: Yeah, all right. Fair enough.

13 All right. Your Honor, I'd like to move into
14 evidence the attorney declaration of Matthew McGuire, which
15 is Docket Entry 42 and the 66 exhibits attached thereto and
16 the notice of filing of a corrected exhibit to the
17 declaration of Matthew McGuire, which is Docket Entry 47, and
18 that attaches a corrected Exhibit 3, that June 2023 deck.

19 THE COURT: Okay.

20 MR. KORNFELD: And as I said, Your Honor, no
21 objections.

22 THE COURT: All right. Those are all admitted,
23 without objection.

24 (McGuire Declaration and attached exhibits received in
25 evidence)

1 MS. WHEELER: Thank you, Your Honor.

2 MR. KORNFELD: Your Honor, may we argue?

3 THE COURT: Yes, go ahead.

4 And, by the way, we can stay -- hopefully, it
5 won't take past 5:30, but we do have some extra time if we
6 need to go past.

7 MR. KORNFELD: Yeah, and we -- I understand that
8 and I just want to alert the Court, we have the need for
9 probably about 10 minutes on Number 14.

10 THE COURT: Yes.

11 MR. KORNFELD: It's not going to be long and
12 there's not going to be evidence.

13 Your Honor, here's where we are on jurisdiction.
14 It's a story of a transaction or transactions between
15 companies on the one hand that are from islands. Latona is
16 Barbados. Alameda is British Virgin Islands. FTX is Antigua
17 and Barbuda and PLS Canada.

18 There's no dispute that the transactions at issue
19 here did not touch the United States. The transactions
20 weren't for the purpose of touching the United States; they
21 were for the purpose of clinical trials that would be
22 conducted in developing and underrepresented countries that
23 need clinical trials in order to fight disease in those
24 countries. The transactions weren't for the purpose of
25 raising money in the United States, conducting trials in the

1 United States, doing business in the United States.

2 We've extensively briefed, and the plaintiffs have
3 extensively briefed the cases in this area, and there's a
4 commonality to the cases when dealing with specific
5 jurisdiction. And the commonality is where the transaction
6 has something to do with the jurisdiction or touches the
7 people in the jurisdiction, like, when money is raised in the
8 jurisdiction, when securities offerings are made in the
9 jurisdiction.

10 In the case of the Dorsey case versus -- about the
11 management of tennis clubs and golf clubs, there was
12 jurisdiction in that case because the California Corporation
13 went to Michigan and opened tennis clubs and golf clubs and
14 used its employees to run those clubs and manage those clubs.
15 So not only were the transactions in the forum, but the
16 employees were in the forum. The business was in the forum.
17 And, in essence, the California Corporation had done what the
18 cases talked about; they had purposely availed themselves of
19 the forum.

20 That is not what has happened here. There has
21 been no purposeful availment of the United States. This
22 entity has not done the transactions at issue in the United
23 States.

24 Now, has its employees touched the United States?
25 Yes. They went there and they got an award because they get

1 a great trial. They published in an American journal, the
2 New England Journal of Medicine, a great honor, in and of
3 itself. They published in The Lancet, a British journal, and
4 they published in African journals and journals throughout
5 the world.

6 But that doesn't mean PLS purposely availed itself
7 of the United States. It doesn't mean that PLS consented to
8 jurisdiction.

9 PLS scientists go to conferences in the United
10 States. They go to conferences all over the world. When
11 you're writing clinical trials and you're trying to cure
12 disease, you've got to stay current. If a conference is in
13 the United States, you're going to go to the United States.

14 Does that mean that you've consented to
15 jurisdiction on behalf of the entity that you work for?
16 Absolutely not. Not a single case says that.

17 Let me turn to the banking issues because there
18 was a lot of briefing and a significant amount of cross-
19 examination on the banking issues. We thought, as the
20 exhibits to Dr. Mills' original declaration shows, we thought
21 based on wire confirmation, that the money came from Tortola,
22 that the money came from the British Virgin Islands. That's
23 what the wire confirmation said.

24 Plaintiffs were kind enough to tell us the money
25 actually came from an American bank account. Let's first

1 stop right there and talk about the money coming from an
2 American bank account. We cited the Gargano v Cayman
3 National Corporation case. It's a district court case from
4 New York, almost on all fours as this case. It was an
5 argument made that there was jurisdiction in the United
6 States because the money came by wire transfer from an
7 American bank account.

8 And the money came from an American bank account
9 to the Cayman bank. And the Court there said the fact that
10 the money came by wire from an American bank down to the
11 Cayman National Bank doesn't create jurisdiction. The payor
12 could have walked into the Cayman bank and deposited a check
13 there.

14 So the fact that the money came from the American
15 account, that wasn't intentionally directed. The recipient
16 of the money didn't say, Make sure you send it from your
17 American bank account. It could have come from the Cayman
18 bank account in cash. So the Court said there:

19 "Defendants receipt of the funds by means of a
20 wire transfer that originated in the United States is
21 fortuitous contact between defendants and the United States,
22 which cannot constitute a basis not exercise of personal
23 jurisdiction."

24 Like here, the fact that the money came from an
25 American bank account instead of an island bank account is a

1 fortuitous contact. It was not a contact that we had any
2 control over.

3 And even if the funds were routed, as we found
4 out, that they were routed through Wells Fargo because CIBC
5 uses that in every receipt of dollars by wire, PLS Canada had
6 no control over that process. That's the bank's process.
7 The bank uses a correspondent bank. Apparently, the use of
8 correspondent banks is something we all learned is used
9 frequently, so that doesn't equal consent to jurisdiction.

10 Canadian Group Underwriters Company v M/V Arctic
11 Trader, a 1998 U.S. District Court case, said when you use a
12 New York bank, in that case, only as a conduit for
13 defendants' account with a London bank, that does not create
14 jurisdiction because, the Court reasoned, defendants do not
15 maintain an account in New York and they had no part in
16 selecting the New York bank, another New York bank as a
17 correspondent bank, as an intermediary.

18 In this situation, PLS Canada does not maintain a
19 New York account. It has no part in selecting Wells Fargo as
20 an intermediary correspondent bank. It is analogous facts to
21 Canadian Group Underwriting Company v M/V Arctic Trader
22 [sic]. There was no jurisdiction there. There's no
23 jurisdiction here, based on the use of the correspondent
24 bank.

25 Wire instructions. Wire instructions are what we

1 all knew was done in this case. When you send wire
2 instructions, you take a screenshot or you cut and paste so
3 you get the wire instructions right and you send them to the
4 entity that's going to wire you. And that was exactly what
5 was done here. Cutting and pasting wire instructions does
6 not mean that PLS had a hand in controlling the process by
7 which funds flowed into its Canadian bank account.

8 The cases the plaintiffs cite, without exception,
9 are cases where foreign banks, who are sued in the U.S.,
10 fought jurisdiction, basically saying, we're a foreign bank;
11 we shouldn't be subject to jurisdiction in the United States.
12 In every one of those cases, there was jurisdiction. I'm
13 talking about Arcapita, which is a case dealing with
14 jurisdiction over the Bahrain Islamic Bank, and I'm talking
15 about Licci v Lebanese Canadian Bank, and SIPC v Madoff.

16 In each of those cases, by contrast to our case,
17 the foreign banks told the wireor [sic], the payor, we have
18 an American bank account. Use the American bank account to
19 get us money. Wire the money in to the American bank
20 account.

21 They control the process. They told the payor how
22 to wire. The payor was told to use the U.S. banking system
23 and that's distinguishable.

24 The classic case that shows how distinguishable
25 these cases are is the Licci v Lebanese Canadian Bank, which

1 is a Second Circuit case from 2013, where personal
2 jurisdiction was found over defendant Lebanese Canadian Bank.
3 In that case, what was the bank doing? The bank was actually
4 gathering money and wiring it to Hezbollah.

5 The bank had been sued by Israeli survivors of
6 terrorist attacks. The bank made a 12(b) (2) motion and said,
7 We're not here. We're in Canada. We're in Lebanon. We
8 shouldn't be haled into an American court. And the Court
9 said, look, you're alleged to have violated American banking
10 laws by funneling money to terrorists. You used American
11 bank accounts. You used dollars. You used your
12 correspondent accounts to wire money to terrorists. That's
13 the allegation. There is jurisdiction.

14 That's not what we have here. We don't have a
15 case, in the Madoff series of cases, where there was
16 jurisdiction over the foreign bank because the foreign bank,
17 again, directed that its correspondent account be used to put
18 dollars in that were obtained from Madoff investors.

19 None of those bank accounts are on point. PLS
20 Canada neither chose to use a U.S. bank or received funds in
21 a U.S. bank. There is no personal jurisdiction.

22 PLS Canada doesn't have a continuous or systematic
23 contact. There is no general jurisdiction. PLS Canada
24 doesn't do anything in the United States from a business
25 standpoint. It doesn't do its business, which is running

1 clinical trials. It runs clinical trials in the countries
2 that Dr. Mills talked about: Brazil, Pakistan, Rwanda, South
3 Africa. It is running trials all over Africa and
4 underrepresented and/or underdeveloped countries.

5 It is doing that good work, but it is not doing
6 that good work in the United States. Yes, it has employees.
7 Yes, it goes to conferences. Yes, it has a presentation
8 where a scientist who was based in the United States is
9 listed as a leader. Yes, it has a chairman, an executive
10 chairman on the board who is a very, very distinguished
11 medical doctor on the Georgetown staff. But it doesn't have
12 a business in the United States. The transaction didn't have
13 anything to do with the United States.

14 And the cases that are cited by the plaintiffs,
15 with respect to the remote employees, just -- it's like -- I
16 mentioned the Dorsey v American Golf Corp. case. Another
17 case that sort of epitomizes what is not going on here is
18 Functional Pathways of Tennessee v Wilson Senior Care, a
19 district court case from Tennessee from 2012. A South
20 Carolina corporation goes to Tennessee. That South Carolina
21 corporation happens to provide therapy to seniors in
22 convalescent hospitals.

23 South Carolina corporation says, We're a South
24 Carolina corporation. There's no jurisdiction over us in
25 Tennessee. And the Court says, Well, your employees worked

1 in Tennessee. Your employees were resident in Tennessee.
2 Your contract was signed in Tennessee and you profited from a
3 lot of work in Tennessee. There is jurisdiction.

4 We don't have that. We haven't profited from the
5 United States. We haven't worked in the United States.
6 We're not working in the United States. As close as we got
7 to the United States and work was an aspirational deck that
8 was sent to an investment banker and was the subject of one
9 conversation; that, jurisdiction, does not make.

10 I would submit, Your Honor, unless you have any
11 questions, there is no general or specific jurisdiction here.

12 THE COURT: Okay. Thank you.

13 No questions for now.

14 Ms. Wheeler?

15 MS. WHEELER: I'll try it again this time, Your
16 Honor.

17 THE COURT: All right.

18 MS. WHEELER: So I wanted to begin with three very
19 simple principles of law that I think require denial of this
20 motion. The first one, Your Honor, is that whereas here,
21 there's been no jurisdictional discovery, the plaintiffs need
22 only make out a *prima facie* case of personal jurisdiction
23 over PLS and we think we've done that. I'll get into that in
24 a second.

25 Second, in deciding a motion to dismiss for lack

1 of personal jurisdiction, the Court considers PLS' contacts
2 at the time the complaint is filed or a short period of time
3 before that and that wasn't briefed. I can give Your Honor
4 the points on that. It's Klinghoffer v S.N.C. Achille Lauro
5 in the Second Circuit, 937 F.2d 44, 52 (2d Cir. 1991) and
6 MacQueen, M-a-c-Q-u-e-e-n v Union Carbide Corp., 2014 WL
7 6809811, at. *6 (D. Del. Dec. 3, 2014).

8 And the reason that point has become relevant,
9 Your Honor, is because as we saw in Mr. Mills' cross-
10 examination, you know, PLS has changed its website after the
11 complaint was filed in a transparent attempt to claim that
12 its leadership team was based in Canada and not in the U.S.,
13 so any eleventh-hour shenanigans by PLS to try to defeat
14 jurisdiction are (indiscernible) irrelevant on this motion.

15 And, third, because there hasn't been an
16 evidentiary hearing on PLS' motion and, in fact, no discovery
17 or any other things, the plaintiffs are entitled to have all
18 of their allegations taken as true and any conflicting facts
19 must be resolved in plaintiffs' favor on this motion. And
20 PLS concedes as much at paragraph 20 of its moving brief,
21 where it cites Pinker v Roche Holdings in the Third Circuit.

22 And the law is clear that where plaintiffs have
23 sustained their burden of producing competent evidence
24 showing jurisdiction is proper, the 12(b) (2) motion must be
25 denied, despite any controverting presentation by the

1 defendant, and that's Godo Kaisha IP Bridge, 2016 WL 4413140.

2 Now, we talked about this earlier, but in support
3 of its motion, PLS submitted two declarations of Edward Mills
4 and as we hope we demonstrated on cross, those declarations
5 not only contradict each other, but they contain demonstrable
6 misstatements, so they don't constitute credible evidence
7 that the Court should consider on this motion.

8 Mr. Mills is not credible on the big points, who
9 the leadership team was and where they were located, and he's
10 not credible on the small points, whether he is a senior
11 scientist at Stanford and whether his company won the PLS --
12 sorry -- the David Sackett Award. It seems like Mr. Mills
13 will say whatever is convenient to whatever audience he's
14 speaking to at the time.

15 But even if the Court were to consider the Mills
16 declaration, to the extent there are factual discrepancies
17 between the evidence plaintiffs have submitted and what
18 Mr. Mills said in his declaration, the Court has to resolve
19 all factual disputes in plaintiffs' favor in deciding this
20 motion.

21 Because Mr. Kornfeld spent a lot of time on wire
22 transfers, I'll start there. We've cited cases at pages 22
23 to 23 of our opposition brief that hold that a defendant's
24 use of a correspondent bank account in the U.S. subjects that
25 foreign defendant to specific jurisdiction in the U.S.,

1 because the foreign defendant purposely availed itself of the
2 U.S. banking system.

3 PLS doesn't dispute that for each of the three
4 transfers, and they totaled \$53 million, Your Honor,
5 plaintiffs sent wire instructions ordering the plaintiffs to
6 send the funds through a correspondent bank. The sending of
7 those wiring instructions, directing that the funds go
8 through a U.S. correspondent bank is an intentional act that
9 constitutes purposeful availment of the U.S. banking system.

10 Mills was aware that he was using the banking
11 system, as that email we showed -- it's McGuire Exhibit 65 --
12 where he tells an FTX employee, Let me know when the wire
13 goes through, because sometimes they get stuck in the U.S.-
14 Canadian banking system and they don't arrive until we
15 inquire.

16 You know, despite sending those wire instructions,
17 PLS contends that it had no hand in directing the process and
18 no control over CIBC's use of Wells Fargo as a correspondent
19 bank. PLS did have choices that would have avoided U.S.
20 jurisdiction; they just didn't utilize them.

21 So, for example, if PLS had wanted to avoid
22 specific jurisdiction in the U.S., it could have chosen to
23 receive the funds in Canadian dollars, it is a Canadian
24 corporation, after all; Bahamian dollars -- Latona was a
25 Bahamian company that was entering into these agreements with

1 it; or any other non-U.S. currency. But they chose U.S.
2 dollars.

3 Had they chosen not-U.S. dollar currency, it
4 wouldn't have gone through Wells Fargo. We looked at the
5 wire instructions. Those are wire instructions for U.S.
6 dollars originating from the U.S.

7 Alternatively, PLS could have avoided specific
8 jurisdiction by receiving the funds in a non-U.S. currency
9 and then utilizing banks outside of the U.S. to convert the
10 funds to U.S. dollars using foreign-exchange transactions.
11 Those transactions wouldn't have utilized a U.S.
12 correspondent bank, but those options wouldn't have allowed
13 PLS -- I'm sorry -- but the options that would have allowed
14 PLS to avoid the U.S. banking system take longer and they
15 involve transaction costs and, therefore, make the
16 transactions more expensive.

17 So PLS did the fastest and least-expensive thing;
18 it affirmatively directed plaintiffs to transfer the U.S.
19 dollars through Wells Fargo as the U.S. correspondent bank
20 and, thereby, purposely availed itself of the U.S. banking
21 system.

22 PLS tries to distinguish the cases that we cited
23 on the grounds that the defendants in those cases were
24 foreign banks, not foreign corporations. But the reasoning
25 in those cases applies, whether defendant is a bank or a

1 corporation. The reasoning of those cases is that it is the
2 purposeful or intentional use of a U.S. correspondent bank
3 that subjects a foreign defendant to personal jurisdiction,
4 not the status of the defendant.

5 The cases that PLS cites, and Mr. Kornfeld spoke
6 about, Gargano and Canadian Group Underwriters Insurance
7 Company are readily distinguishable. In those cases, there
8 is no evidence that the defendants directed the wire
9 transfers through a U.S. correspondent bank. There wasn't
10 even a U.S. correspondent bank in Gargano.

11 In Gargano, the Court noted that for defendants'
12 purposes, it did not matter where the money came from or how
13 it got to them.

14 But here, it mattered to PLS how the money got to
15 them. They sent wire instructions, directing that the U.S.
16 dollars go through the U.S. correspondent bank at Wells
17 Fargo. PLS cites Gargano for the proposition that the
18 receipt of a wire transfer is an inherently passive action
19 that is a fortuitous contact between the defendant and the
20 United States that can't establish specific jurisdiction.

21 But unlike the defendants in Gargano, PLS' actions
22 were not inherently passive; PLS affirmatively directed
23 plaintiffs to wire the U.S. dollars through Wells Fargo.

24 Similarly, in Canadian Group Underwriters, there
25 was no evidence defendants directed plaintiff to use UniBank

1 in New York as the correspondent bank. The Court said the
2 defendant has no part in selecting the New York bank as the
3 intermediary.

4 Here, by affirmatively sending the wire
5 instructions, directing plaintiffs to send the funds through
6 the Wells Fargo, as correspondent bank, PLS purposely availed
7 itself of the United States banking system.

8 But we don't just have the wires. We also have
9 PLS affirmatively invoking the protections of the U.S.
10 securities and tax laws in the SAFE and we have PLS agreeing
11 to New York arbitration provisions and New York choice of law
12 in the services agreement. So, you know, if you agree to
13 arbitrate in New York and you agree to New York law, you
14 should at least foresee the possibility of litigation in the
15 United States.

16 And they also used New York lawyers to negotiate
17 these agreements. And, you know, plaintiffs make the point
18 that it's not exclusively New York lawyers, but it's
19 exclusively U.S. connections that matter to this motion and
20 nobody disputes that they used U.S. lawyers.

21 We talked about the Delaware entity. Whatever the
22 reason it was created, there's now no dispute that it was
23 created in connection with this transaction at Latona's
24 intent, and so that's another, you know, the creation of a
25 Delaware entity in connection with this transaction is

1 purposeful availment.

2 Turning to general jurisdiction. There are an
3 awful lot of contacts that PLS doesn't dispute and it's the
4 totality of the circumstances that matters for general
5 jurisdiction. So just to go down the list quickly, PLS
6 doesn't dispute that 43 percent of its employees reside and
7 work in the U.S. That's a really large percent, Your Honor,
8 43 percent. PLS doesn't dispute that it actively solicits
9 employees to work in the U.S. And it's not, as Dr. Mills
10 contends in his reply declaration, that some employees just
11 happen to work in the U.S.

12 If you look at Exhibit 36 to the McGuire
13 declaration, it's a PLS job posting for a senior director of
14 business development in Boston, Massachusetts. Not anywhere
15 in the U.S. -- Boston, Massachusetts. You must live in
16 Boston, Massachusetts, to do this job for PLS. That's not
17 just some employees happen to work in the U.S.

18 PLS doesn't dispute that it's employees regularly
19 publish articles in U.S. medical journals, that they publish
20 articles with other U.S. academics and doctors, and that PLS
21 posts those journal articles on its website.

22 PLS doesn't dispute that its employees regularly
23 attend conferences in the U.S. and that those employees have
24 one-on-one business meetings with conference attendees in the
25 U.S. at those conferences. And those are McGuire Exhibits

1 40, 41, and 43. Each of the attendees says, you know, please
2 contact us to arrange a one-on-one meeting with us at the
3 conference.

4 What do you think they're doing at those meetings?
5 They're soliciting business on behalf of PLS in the U.S. PLS
6 doesn't dispute it, partner with GreenLight and Eiger, which
7 are U.S. companies, for clinical trials outside of the U.S.
8 It doesn't dispute that the TOGETHER Trial received funding
9 from U.S. investors. And it doesn't dispute that Ed Mills
10 traveled to the U.S. to accept the award for the Clinical
11 Trial of the Year.

12 There are really only four facts that plaintiffs
13 had presented that PLS disputes and we've covered each of
14 those on cross, Your Honor. The first one is that five of
15 the six members of the leadership team at the time the
16 complaint was filed were in the U.S., and so they were
17 directing PLS' activities from the U.S. we talked about the
18 83 clinical sites and 23 experts that it told the debtors'
19 investment bankers it had in the U.S. You can't tell the
20 bankers you have these and then deny them when it's
21 inconvenient for your personal jurisdiction motion. You
22 know, the dispute about whether PLS won the David Sackett
23 Award. Whether it did or it didn't, that's what PLS is out
24 touting to the world in its press release, including quotes
25 from Mr. Mills. And, finally, whether Mr. Mills is a senior

1 scientist at Stanford; again, he's touting it on his LinkedIn
2 and in his deck to the debtors.

3 I don't want to belabor any of those other things.
4 I would say in closing, you know, Mr. Kornfeld sort of opened
5 by saying that this is a case about an Antiguan company and a
6 British Virgin Islands company and a Bahamian company and a
7 Canadian company. That's not what this case is.

8 We filed a complaint against six life sciences
9 companies. Five of them are in the U.S.: Sam Bankman-Fried,
10 a U.S. citizen; Ross Rheingans-Yoo, a U.S. citizen; Nick
11 Beckstead, a U.S. citizen; FTX Foundation, a Delaware
12 nonprofit; and PLS.

13 This is a case that should be heard in this
14 bankruptcy court in the U.S. The Court and the debtors have
15 an interest in litigating this adversary proceeding here and
16 having the fraudulent transfers adjudicated in the United
17 States.

18 Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. KORNFELD: A short response, Your Honor?

21 THE COURT: Certainly.

22 MR. KORNFELD: Your Honor, the SAFE is Exhibit 5.
23 That's the transaction document for the \$35 million transfer.
24 Counsel left out what the safe says about jurisdiction and
25 choice of law which is on page 7 of the SAFE at Section 7(f).

1 That reads:

2 "The parties agree that this SAFE and all the
3 rights and obligations hereunder shall be governed by the
4 laws of the province of British Columbia and the federal laws
5 of Canada applicable therein. Each party hereby submits to
6 the exclusive jurisdiction of the courts of Vancouver and
7 British Columbia."

8 Counsel left that out. Counsel also left out the
9 provisions of the services agreement, which is Exhibit 8 of
10 our exhibit list that talked about Canadian securities laws,
11 that talk about Canadian jurisdiction. That was left out,
12 too.

13 Counsel talks about what we don't dispute.
14 Plaintiffs don't dispute this is a case about a business who
15 doesn't have any business activity in the U.S. Counsel
16 doesn't focus on the big picture here, which is however
17 counsel tries to minimize it, this is transactions between
18 companies that don't have anything to do with the U.S.

19 Yes, the FTX bankruptcy case has a lot to do with
20 the U.S. Samuel Bankman-Fried, et al., have a lot to do with
21 the U.S.

22 We're talking about what PLS Canada has to do with
23 the U.S. and PLS Canada doesn't have very much to do with the
24 U.S. It doesn't do its trials here. It doesn't operate
25 here. Yes, it has some employees. Yes, it gets some awards.

1 Yes, it talks to academics. Not to talk to academics
2 throughout the world when you're trying to cure disease would
3 be scientific malpractice.

4 Now, a couple of points from counsel's argument
5 struck me, in particular, the point about foreign currency
6 which is a point that nobody briefed. Nobody said that if
7 you're a Canadian entity who gets money in dollars, you
8 purposely availed yourself of the United States'
9 jurisdiction, until counsel argued.

10 So if counsel's argument is taken to its
11 conclusion, and it's not an absurd stretch, every dollar
12 transfer to a Canadian bank account would constitute
13 purposeful availment of the United States' jurisdiction. You
14 would then be subject, as a Canadian who received a wire
15 transfer denominated in dollars, to jurisdiction of American
16 courts; again, not a logical stretch to take a Japanese
17 citizen who received a dollar transfer, you would then be
18 subject to the jurisdiction of American courts.

19 Receiving dollar transfers in a Canadian bank
20 account does not, under any stretch of the imagination, or in
21 any case, ever constitute consent to jurisdiction.

22 The Delaware entity in this case was not used.
23 The Delaware entity, it was contemplated, as we see from the
24 emails, as Dr. Mills candidly testified, the Delaware entity
25 was an entity that was formed that could have been used. It

1 was not used. Nobody has made any allegations against the
2 Delaware entity; in fact, as we will see when we get to
3 Number 14, the plaintiff is saying, now, that it does not
4 have any claims against the Delaware entity. The Delaware
5 entity doesn't run trials and, most importantly, wasn't a
6 part of the transactions at issue. The Delaware entity did
7 not receive any of the transfers that form the basis of the
8 alleged fraudulent transfers.

9 So, you can say that because PLS Canada has
10 touched, and continues to touch the United States in various
11 shapes and forms, it has purposely availed itself of United
12 States law and there is jurisdiction, but if you say that,
13 you're making an argument that is contrary to every argument
14 in every case about jurisdiction. There's no case that says
15 if you touch the forum, whether it be, in this case, the
16 United States, or whether it be in many of the cases we
17 almost cited cases where the resident of one state is
18 fighting jurisdiction in another state.

19 Touching a forum doesn't get jurisdiction.
20 Continuous and systematic contact with the jurisdiction gets
21 you general jurisdiction. That's the law.

22 What is continuous and systematic contact? The
23 epitome of it is your headquarters are in the jurisdiction or
24 you're incorporated in the jurisdiction. You're at home, as
25 the cases say, in the jurisdiction. That's general

1 jurisdiction.

2 PLS Canada is not incorporated in the United
3 States; it's incorporated in Canada. PLS Canada is not
4 headquartered in the United States; it's headquartered in
5 Canada. PLS is not at home in the United States; it's at
6 home in Canada.

7 PLS received the transfers at issue in Canada. It
8 does its business throughout the world, but not in the United
9 States. There is no jurisdiction, whether it's general
10 jurisdiction or specific jurisdiction.

11 The fact that PLS cut and pasted wire instructions
12 does not constitute jurisdiction because, again, not a
13 stretch, CIBC still uses Wells Fargo as a correspondent bank
14 for dollar transfers. Are we to say to every CIBC account
15 holder who receives a transfer in American dollars that that
16 account holder has consented to jurisdiction in the United
17 States?

18 We can't say that without being accused of having
19 no legal basis whatsoever to support that. There is no legal
20 basis to support that. There is no legal basis for
21 jurisdiction.

22 Thank you, Your Honor.

23 THE COURT: All right. I'm going to take the
24 matter under advisement and I'll issue a ruling in due
25 course.

1 Let's move on to Item 14 and I've read the papers
2 on this, so let's not take a whole lot of time on it.

3 MR. KORNFELD: Okay. I'm going to do it in under
4 5 minutes, Your Honor.

5 THE COURT: All right.

6 MR. KORNFELD: So our position is that PLS
7 Delaware didn't do anything in connection with any of the
8 transactions. PLS Delaware is sued in the complaint; they're
9 named in paragraph 21 of the complaint.

10 THE COURT: They said they're not pursuing you in
11 Delaware.

12 MR. KORNFELD: They're not pursuing it, and so we
13 have a difference of opinion only about one thing. The
14 difference of opinion is what should you do when you hear, as
15 they wrote in their papers, that they're not pursuing PLS
16 Delaware.

17 PLS Delaware's position is you should grant the
18 motion to dismiss under 12(b) (6) without leave to amend. The
19 plaintiffs' position is we've said we're not pursuing
20 Delaware and that's good enough, therefore, this is all moot.
21 We'll take out any reference to pursuing Delaware from the
22 complaint.

23 Here's my problem with that, Your Honor. They
24 could decide tomorrow or in six months to make a motion to
25 amend to say they are pursuing Delaware. There's no basis

1 for that, in my view, but there's no stopping them from doing
2 that unless you issue a decision that they have failed to
3 state a claim against Delaware and they can't amend to state
4 that claim.

5 That's why I'm asking you to grant the motion
6 without leave to amend.

7 THE COURT: All right. Any response?

8 MS. WHEELER: Your Honor, we never sued PLS
9 Delaware, so there's no motion to dismiss, with respect to
10 PLS Delaware, so the motion to dismiss should be denied as
11 moot. You can't dismiss someone without prejudice when
12 there's been no briefing, no discovery. If we find six
13 months from now, some basis to sue PLS Delaware, we'll sue
14 PLS Delaware.

15 What he's asking for at this very early stage of
16 the case seems unnecessary.

17 MR. KORNFELD: Your Honor, in paragraph 21 of the
18 complaint, let me read it to you:

19 "PLS is a company incorporated in British
20 Columbia, Canada, in February of 2021 and in Delaware in
21 March of 2022, that supports clinical trials, including anti-
22 therapeutics research."

23 We read that to say they sued both of the
24 entities.

25 THE COURT: Who's in the caption?

1 MR. KORNFELD: In the caption, it's Platform Life
2 Sciences, Inc. That's it.

3 THE COURT: All right. Well, I'm not going to
4 grant the motion to dismiss with prejudice, because as
5 Ms. Wheeler pointed out, six months from now, they might find
6 some additional information that gives them the basis to sue
7 you.

8 But I do think the debtors need to file an amended
9 complaint to make it clear that you're not pursuing PLS
10 Delaware in this complaint.

11 So I will -- you know, it's kind of a "chicken and
12 the egg" kind of thing, because I don't think they have
13 actually sued PLS Delaware, but maybe they did. I don't
14 know. Hard to tell.

15 So I think the best way to approach this is just,
16 as I said, file an amended complaint to make it clear that
17 you're only suing PLS Canada, not PLS Delaware.

18 MS. WHEELER: Your Honor, can we do that after you
19 decide the motion to dismiss for lack of jurisdiction?

20 I don't want to spend my one amendment, as of
21 right, deleting four words from paragraph 21, until I see
22 Your Honor's ruling on this motion.

23 THE COURT: That makes sense.

24 MS. WHEELER: Thank you.

25 MR. KORNFELD: That is all we have, Your Honor.

1 THE COURT: Okay. Thank you.

2 Anything else from the debtors today?

3 MR. LANDIS: Not today, Judge, thank you.

4 And, Your Honor, I'd just note that we did
5 upload -- this is Adam Landis for the record -- we did upload
6 that order in connection with Item 11, so it'll be waiting
7 for your signature anytime.

8 THE COURT: All right. Thank you all very much.

9 We're adjourned.

10 COUNSEL: Thank you, Your Honor.

11 (Proceedings concluded at 5:19 p.m.)

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CERTIFICATION

2 We certify that the foregoing is a correct
3 transcript from the electronic sound recording of the
4 proceedings in the above-entitled matter to the best of our
5 knowledge and ability.

6

7 | /s/ William J. Garling

November 16, 2023

8 | William J. Garling, CET-543

9 Certified Court Transcriptionist

10 | For Reliable

11

12 || /s/ Tracey J. Williams

November 16, 2023

13 | Tracey J. Williams, CET-914

14 || Certified Court Transcriptionist

15 | For Reliable

16

17 /s/ Mary Zajaczkowski

November 16, 2023

18 | Mary Zajaczkowski, CET-531

19 | Certified Court Transcriptionist

20 | For Reliable

21

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25